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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL., PETITIONERS,

vs.

HALDRED OVERSTREET.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED AUGUST 28, 1965
CERTIORARI GRANTED DECEMBER 6, 1965

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[fol. 1]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

State of Georgia
County of Chatham

PETITION—Filed June 22, 1962

The petition of Haldred Overstreet, respectfully shows:

1. Plaintiff is engaged in the operation of a retail grocery at 1601 Montgomery Street in Savannah, Chatham County, Georgia.

2. The defendants herein are the National Association for the Advancement of Colored People, a New York corporation doing business in Georgia; the Georgia State Conference of Branches, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People which is a New York corporation doing business in Georgia and which is also styled as the Georgia Chapter of the National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, being an affiliate of the National Association for the Advancement of Colored People, a New York corporation doing business in Georgia, said defendant corporations having a place of business in Chatham County, Georgia; W. W. Law, individually and as president of the Georgia and Savannah affiliates of the defendant corporations and who is an agent in Chatham County, Georgia, for the defendant corporations, and Rev. F. D. Jaudon, individually and as vice-president of the Georgia and Savannah affiliates of the defendant corporations and who is an agent in Chatham County, Georgia, for the defendant corporations. The individual defendants are residents of Chatham County, Georgia.

3. Defendants are subject to the jurisdiction of this court.

4. This suit for injunction and damages is brought against the above-named defendants individually and jointly and as a representative of the classes composed of all the members of the National Association for the Advancement of Colored People and against others similarly situated and is brought as a class suit in equity as the law provides in such cases. The said named defendants herein set out are suitable and proper persons to represent such classes. The unnamed defendants constituting the class are too [fol. 2] numerous to include in this lawsuit, but they have been acting in concert with the defendants in the activities hereinafter described and have been acting in conspiracy with and under the direction of the defendants, and particularly under the direction of the individual defendant, W. W. Law.

5. This complaint is brought against said defendants for temporary and permanent injunction and restraining order, and compensatory damages and punitive damages, to prevent defendants from picketing and conspiring to picket the store of the plaintiff and conspiring to induce any persons to boycott the plaintiff's store, and to recover the damages for the injuries incurred by the plaintiff as a natural consequence of defendants tortious and unlawful acts, as more particularly hereinafter set forth.

6. That on May 30, 1962, a fourteen (14) year old colored boy named Robert Lee Bolden was employed by plaintiff in his grocery store. Having been informed by two of his clerks that said boy had taken some grocery items from the store without permission, plaintiff called the boy to him and admonished him about taking the articles without permission and subsequently, on the same day, discharged the boy from his employment. About two hours after said discharge the boy returned to plaintiff's store along with some police officers and accused the plaintiff of having beaten him. Later the same day, the aunt of said colored boy took out a warrant against plaintiff for assault and battery. Upon going to the police barracks and putting

up bond, plaintiff charged said boy with larceny from his store.

7. On May 31, 1962, at 8:00 P.M. at the St. Phillips Monumental Church on Park Avenue and Jefferson Street where defendant Jaudon is pastor, there was a mass meeting of the Savannah Branch of the National Association for the Advancement of Colored People, called pursuant to circulars distributed to members during that day calling for a meeting to protest the alleged "beating of a fourteen (14) year old negro boy by the owner of the Tropical Market". Present at and leading the meeting were the defendants Law and Jaudon. At this meeting the defendants organized [fol. 3] what they refer to as a "selective buying" campaign to begin the following day and called for pickets to assemble at plaintiff's place of business.

9. That on the day following the meeting of the N.A.A.C.P., the defendants caused pickets to be placed adjacent to the plaintiff's place of business located at 1601 Montgomery Street, Savannah, Georgia, which pickets commenced stopping customers and prospective customers of plaintiff who were on the way to plaintiff's store to trade and made accusations to such persons to the effect that the plaintiff had beat up the fourteen (14) year old negro boy and that such customer or prospective customer should not thereafter trade with the plaintiff. That said picketing consisted of having a large number of people in and around the premises of the plaintiff to prevent the public from entering the business of the plaintiff in order to accomplish the unlawful purpose and objective of defendants of putting the plaintiff out of business by preventing any trade with him. That said picketing has commenced from May 31, 1962 until the present date and said pickets are still carrying on the same acts adjacent to plaintiff's business.

10. Plaintiff believes in his inherent right to carry on a legitimate business for which he has been licensed by the City of Savannah and to carry on such business free

of the coercive and intimidating influences brought upon his customers and prospective customers by defendants and their agents.

11. That said pickets are intimidating all persons approaching said store from going on the premises of the plaintiff and thereby preventing him from engaging in his lawful business of selling and disposing of goods, wares and merchandise, and that these acts by defendants are in violation of the laws of Georgia.

[fol. 4] 12. The defendants have encouraged and are inducing the public to boycott the plaintiff's business in order to accomplish their unlawful purpose of seeking to destroy the mutual confidence existing between the plaintiff and his customers and employees and seeking to put him out of business by alienating his customers.

13. That the plaintiff has engaged in the operation of an open air retail grocery store at the aforesaid location for a period of approximately sixteen (16) years and has created good will and good faith in the course of his business with the public, which is an invaluable asset.

14. That the defendant W. W. Law has been the leader of said pickets and has been instrumental in placing said pickets adjacent to the business and in advising them what hours to picket and what method of approach to take in talking to plaintiff's customers and prospective customers in order to alienate said customers from trading with plaintiff.

15. That said picketing consists of mass picketing in that numbers of pickets gathered around the premises of the plaintiff, obstructing and interfering with the use of the public sidewalks and streets and the entrance to the plaintiff's business. That said mass picketing was a part of the conspiracy of the defendants to intimidate customers from entering the plaintiff's store and to force, intimidate and coerce the plaintiff into going out of business. That

all sorts of false and spurious accusations have been made against plaintiff by said defendants both before and after the trial of plaintiff in the Recorder's Court of the City of Savannah.

16. That the pickets are harassing and intimidating customers from going on the premises of the plaintiff by creating an atmosphere around plaintiff's premises of possible violence, by stopping every customer as they approach plaintiff's store, by having large numbers of pickets in and around plaintiff's premises, by inciting and inflaming customers and the public by false and misleading statements regarding conduct of the plaintiff, all of which are causing plaintiff's customers to be fearful of trading in plaintiff's store, and are thereby preventing plaintiff from [fol. 5] engaging in his lawful business of selling and disposing of goods, wares and merchandise in violation of the laws of Georgia.

17. That said pickets have threatened physical harm to the employees of plaintiff in an attempt to force them to quit the employment of plaintiff, in violation of Section 54-801 of the Code of Georgia (Georgia Laws 1947, Page 620).

18. That the defendants had full knowledge that their actions would cause irreparable damage to the plaintiff's good will and said actions of defendants were intentional, willful and for the purpose of causing damage to the plaintiff and putting him out of business. All of the aforesaid acts on the part of the defendants constitute a general scheme and conspiracy on their part to force and intimidate the plaintiff to go out of business and to hinder him from engaging in his proper and lawful business activity.

19. That as a result of the foregoing acts of the defendants the plaintiff is incurring a loss in sales each day and continues to incur said loss and the extent of his damages are not now known. Plaintiff reserves the right to amend this petition when the same is known.

20. Continuance of the picketing is causing and will cause plaintiff irreparable damage and plaintiff has no adequate remedy at law. That said continued unlawful picketing and boycotting by the defendants will cause great and irreparable damages to the plaintiff's good will in an amount and nature as is incapable of ascertainment in monetary terms and would lead to a closing of plaintiff's store to the great damage of plaintiff.

21. Plaintiff alleges that neither individual defendants nor any of their officers, agents, members, representatives nor anyone acting in concert with them, is or claims to be or have been an employee or representative of any employee of plaintiff and there is not and has not been any labor dispute between the plaintiff and any of his present employees.

22. That plaintiff has not conducted his business in any manner to discriminate against any of the individual defendants, or any of the corporate defendants, or their members.

23. Plaintiff alleges that the establishment of picket lines [fol. 6] and the maintaining of a boycott of his store in order to put him out of business because of the false accusations against him is an infringement upon his right to do business and seeks to impair and destroy his business.

Wherefore, the plaintiff prays:

(A) That defendants, their associates, conspirators and confederates and all persons aiding and abetting said defendants, including among others all members of the National Association for the Advancement of Colored People, W. W. Law, individually and as president of the Georgia Chapter and the Savannah Chapter of the said association, be temporarily restrained and permanently enjoined from picketing or maintaining pickets in or about or near the plaintiff's place of business located at 1601 Montgomery Street, in Savannah, Chatham County, Georgia.

(B) That said defendants be enjoined from conspiring to induce any person or persons to boycott or not trade at the plaintiff's place of business or hinder or disrupt the orderly lawful business activities of the plaintiff by threats, violence, intimidation or other unlawful means.

(C) That defendants be enjoined from threatening the employees of plaintiff in an attempt to get them to quit their employment.

(D) That plaintiff be awarded judgment in the sum of One Hundred Thousand Dollars for exemplary or punitive damages as the result of the foregoing willful and malicious acts of said defendants.

(E) That plaintiff be awarded damages resulting from the loss of sales as they may be determined.

(F) That said defendants be enjoined from inducing others to engage in economic boycott of the plaintiff's business.

(G) That said defendants be enjoined from interfering with customers of plaintiff's business.

(H) That plaintiff have such other and further relief as may be equitable and just, and

(I) That process issue, directed to the defendants requiring them to answer said plaintiff upon the merits of this his complaint.

Dickey, Futrell and Barker, By: G. L. Dickey, Attorneys for Petitioner.

[fol. 7] *Duly sworn to by Haldred Overstreet, jurat omitted in printing.*

[fol. 8]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE—June 22, 1962

The within and foregoing petition read and considered, and sanctioned and ordered filed.

Let copies of the petition and order be served upon the defendants named therein. The court, subject to objections or demurrers, designates each of said individual defendants as representatives of the class composed of the National Association for the Advancement of Colored People.

The defendants, their associates, conspirators and confederates, and all persons aiding or abetting said defendants, until further order of this Court, are hereby temporarily restrained and enjoined from picketing or maintaining pickets in or about or near the place of business of the plaintiff located at 1601 Montgomery Street, Savannah, Chatham County, Georgia, and they are temporarily restrained and enjoined from conspiring to induce or inducing any person or persons to boycott or not to trade at the plaintiff's place of business or hinder or disrupt the orderly lawful business activities of the plaintiff by threats, violence, intimidation or other lawful (sic) means.

Let the defendants show cause before me at the Chatham County Courthouse at 10:00 o'clock A.M. on the 29 day of June, 1962, why the restraining order herein granted should not be continued until a final hearing on said case. Let the defendants be served with copies of this order and the foregoing petition instanter.

This 22 day of June, 1962.

B. B. Heery, Judge of Superior Court, Chatham County, Georgia.

[fol. 9]

SHERIFF'S OFFICE.

State of Georgia,)
County of Chatham,)

The undersigned Sheriff's deputies have served the within original Petition and Order upon the within named defendants, by serving each a copy of the said Petition and Order in the following manner as indicated:

Defendant.	Manner of Service.	Date.
W. W. Law, Individually a/a President of the Georgia and Savannah Affiliates of the N.A.A.C.P.	Personal (Appx. (7:00 P.M.) /s/ GEORGE KAPNER	6/22/1962.
The Savannah Branch, N.A.A.C.P.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
The Georgia State Conference of Branches, N.A.A.C.P.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
National Association for the Advancement of Colored People.	W. W. Law, Pres. /s/ GEORGE KAPNER	6/22/1962.
Rev, F. D. Jaudon, Individually a/a Vice President of the Georgia and Savannah Affiliates, N.A.A.C.P.	Personal /s/ FRED SCHOFER	6/25/1962.

[fol. 10]

State of Georgia
Chatham County

To the Sheriff of the County of Chatham or His Deputy—Greeting

Civil Action

HALDRED OVERSTREET,

vs.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a New York corporation doing business in Georgia,

THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, an affiliate of the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, also styled as the GEORGIA CHAPTER OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, an affiliate of the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

W. W. LAW, individually and as president of the GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and the SAVANNAH BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; and

REV. F. D. JAUDON, individually and as vice president of the SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE.

The defendants: the National Association for the Advancement of Colored People, a New York corporation

doing business in Georgia; the Georgia State Conference of Branches, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People, also styled as the Georgia Chapter of the National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, an affiliate of the National Association for the Advancement of Colored People; W. W. Law, individually and as President of the Georgia State Conference of Branches, National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People; and Rev. F. D. Jaudon, individually and as Vice President of the Savannah Branch, National Association for the Advancement of Colored People,

Are hereby required, personally, or by their attorney, to be and appear in the Superior Court at the courthouse in Savannah, Georgia, within thirty (30) days from the date [fol. 11] of service of this process upon you, then and there to answer the plaintiff on the merits of the foregoing petition; as in default of such appearance the said court will proceed as to justice shall appertain.

Witness, the Honorable B. B. Heery, Judge of said Superior Court, this 22 day of June, in the year of our Lord, One Thousand, Nine Hundred and Sixty-two (1962).

Dickey, Futrell and Barker, By: G. L. Dickey, Plaintiff's Attorney.

(Seal of Court)

P. R. Schreck, Dep. Clerk Superior Court, Chatham County, Georgia.

[File endorsement omitted]

[fol. 12]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GA.

HALDRED OVERSTREET,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW, and REV. F. D. JAUDON.

AMENDMENT OF PLAINTIFF'S PETITION—
Filed February 1, 1963

Now comes Haldred Overstreet, plaintiff in the above-captioned case, and, with leave of court first obtained, files this amendment to his petition, as follows:

1. By inserting between the words "the" and "Savannah" on the third line of Paragraph 7 of the original petition the words "National Association for the Advancement of Colored People and the"; and by adding to the sentence ending with the word "Jaudon" on the ninth line of Paragraph 7 the following, "defendant Law attending and acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation"; and by inserting between the words "defendants" and "organized" on the ninth line of Paragraph 7 the words "unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of putting plaintiff out of business"; so that, as amended, Paragraph 7 will read as follows:

"7. On May 31, 1962, at 8:00 P.M. at the St. Phillips Monumental Church on Park Avenue and Jefferson Street

where defendant Jaudon is pastor, there was a mass meeting of the National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People, called pursuant to circulars distributed to members during that day calling for a meeting to protest the alleged "beating of a fourteen (14) year old Negro boy by the owner of the Tropical Market". Present at and leading the meeting were [fol. 13] the defendants Law and Jaudon, defendant Law attending and acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation. At this meeting the defendants unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with th wickedly contrived intention of putting plaintiff out of business organized what they refer to as a "selective buying" campaign to begin the following day and called for pickets to assemble at plaintiff's place of business."

2. By inserting between the words "defendants" and "caused" on the second line of Paragraph 9 of the original petition the words "unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of damaging plaintiff and putting plaintiff out of business"; so that, as amended, Paragraph 9 will read as follows:

"9. That on the day following the meeting of the N.A.A.C.P., the defendants, unlawfully, wantonly, willfully, and knowingly, and with malice aforethought and with the wickedly contrived intention of damaging plaintiff and putting plaintiff out of business caused pickets to be placed adjacent to the plaintiff's place of business located at 1601 Montgomery Street, Savannah, Georgia, which pickets commenced stopping customers and prospective customers of plaintiff who were on the way to plaintiff's store to trade and made accusations to such persons to the effect that the

plaintiff had beat up the fourteen (14) year old Negro boy and that such customer or prospective customer should not thereafter trade with the plaintiff. That said picketing consisted of having a large number of people in and around the premises of the plaintiff to prevent the public from entering the business of the plaintiff in order to accomplish the unlawful purpose and objective of defendants of putting the plaintiff out of business by preventing any trade with him. That said picketing has commenced from May 31, 1962 until the present date and said pickets are still carrying on the same acts adjacent to plaintiff's business."

3. By adding to the end of Paragraph 12 of the original petition the following sentences: "That defendants maliciously and wantonly and with a reckless disregard of the [fol. 14] plaintiff's rights employed conduct and language intended to create a prejudice, sentiment or feeling against plaintiff deterring those from buying from him who had been doing so and inclined to continue doing so. That, at the time such picketing was commenced by defendants, more than two-thirds of plaintiff's customers were Negroes; that defendants were aware that a substantial portion of plaintiff's income was derived from Negro customers trading with him, and that the unlawful, wanton, wilful, and malicious conspiracy conducted by defendants was initiated and carried on with the malicious intent and purpose to damage him in the pursuit of his lawful enterprise"; so that, as amended, Paragraph 12 will read as follows:

"12. The defendants have encouraged and are inducing the public to boycott the plaintiff's business in order to accomplish their unlawful purpose of seeking to destroy the mutual confidence existing between the plaintiff and his customers and employees and seeking to put him out of business by alienating his customers. That defendants maliciously and wantonly and with a reckless disregard of the plaintiff's rights employed conduct and language intended to create a prejudice, sentiment or feeling against plaintiff deterring those from buying from him who had been doing

so and inclined to continue doing so. That, at the time such picketing was commenced by defendants, more than two-thirds of plaintiff's customers were Negroes; that defendants were aware that a substantial portion of plaintiff's income was derived from Negro customers trading with him, and that the unlawful, wanton, wilful, and malicious conspiracy conducted by defendants was initiated and carried on with the malicious intent and purpose to damage him in the pursuit of his lawful enterprise."

4. By adding to the end of Paragraph 14 of the original petition the following sentence: "That the defendant W. W. Law, in using such tactics, was acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation", so that, as amended, Paragraph 14 will read as follows:

[fol. 15] "14. That the defendant W. W. Law has been the leader of said pickets and has been instrumental in placing said pickets adjacent to the business and in advising them what hours to picket and what method of approach to take in talking to plaintiff's customers and prospective customers in order to alienate said customers from trading with plaintiff. That the defendant W. W. Law, in using such tactics, was acting in and for the services of the National Association for the Advancement of Colored People as its agent, employee, and servant, within the scope of said agency, employment and service, and in furtherance of the business of said corporation."

5. By inserting between the words "intentional" and "willful" on the third line of Paragraph 18 of the original petition the word "malicious"; by inserting between the words "general" and "scheme" on the sixth line of the original petition the word "malicious"; so that, as amended, Paragraph 18 will read as follows:

"18. That the defendants had full knowledge that their actions would cause irreparable damage to the plaintiff's

good will and said actions of defendants were intentional, malicious and willful and for the purpose of causing damage to the plaintiff and putting him out of business. All of the aforesaid acts on the part of the defendants constitute a general malicious scheme and conspiracy on their part to force and intimidate the plaintiff to go out of business and to hinder him from engaging in his proper and lawful business activity."

6. By striking from Paragraph 19 of the original petition the second sentence thereof and by adding to the end of said paragraph, as amended, the following: "Plaintiff shows that, for the period of five months immediately preceding said picketing, his gross income from the operation of his said business was $48,386.29, from which he realized a net profit of approximately $9,677.25, but that, for the period of five months immediately following the commencement of said picketing, his gross income from the operation of his said business was $18,251.99, from which he realized a net profit of approx. $3,650.39. That plaintiff's loss of gross income and resultant loss in net profit of approximately $6,026.86 during these five months was the direct result of and caused by the unlawful, wanton, wilful, and malicious acts of defendants as described in this petition. [fol. 16] Plaintiff reserves the right to amend this paragraph further at such time as he has determined his actual losses not covered by this amendment and also reserves the right to show the difference in the value of his business before and after the results of said picketing as soon as he can reach a determination of same. Plaintiff further shows that he has suffered damages to the good will in his business operation as a result of the said unlawful, wanton, wilful, and malicious acts of defendant in the amount of $50,000.00,"; so that, as amended, Paragraph 19 will read as follows:

"19. That as a result of the foregoing malicious acts of the defendants the plaintiff is incurring a loss in sales each day and continues to incur said loss and the extent of his damages are not now known. Plaintiff shows that, for

the period of five months immediately preceding said picketing, his gross income from the operation of his said business was $48,386.29, from which he realized a net profit of approximately $9,677.25, but that, for the period of five months immediately following the commencement of said picketing, his gross income from the operation of his said business was $18,251.99, from which he realized a net profit of approximately $3,650.39. That plaintiff's loss of gross income and resultant loss in net profit of approximately $6,026.86 during these five months was the direct result of and caused by the unlawful, wanton, wilful, and malicious acts of defendants as described in this petition. Plaintiff reserves the right to amend this paragraph further at such time as he has determined his actual losses not covered by this amendment and also reserves the right to show the difference in the value of his business before and after the results of said picketing as soon as he can reach a determination of same. Plaintiff further shows that he has suffered damages to the good will in his business operation as a result of the said unlawful, wanton, wilful, and malicious acts of defendants in the amount of $50,000.00."

7. By striking Paragraph (E) of the prayers of the original petition and substituting in lieu thereof the following Paragraph Letter (E): (E) That plaintiff be awarded the [fol. 17] sum of $6,026.86 as actual loss of profits and the sum of $50,000.00 for damages to the good will of his business.

Dickey, Futrell and Barker, By: Grady L. Dickey,
Attorneys for Plaintiff.

Amendment allowed, subject to objections. This 1st day of February, 1963.

Dunbar Harrison, Judge, Superior Court, E.J.C. of Georgia.

[fol. 18] *Duly sworn to by Haldred Overstreet, jurat omitted in printing.*

[File endorsement omitted]

[fol. 23]

IN THE SUPERIOR COURT OF SAID COUNTY

[Title omitted]

DEFENDANT'S ANSWER—Filed August 6, 1962

Now comes The National Association for the Advancement of Colored People, Defendant in the above stated action, said action being in default as of July 22, 1962, and seeking to open the same as a matter of right pursuant to the provisions of Georgia Code Section 110-401, and after payment of costs files this its answer:

1.

Defendant admits "Paragraph 1" of Plaintiff's Petition.

2.

Defendant denies "Paragraph 2" of Plaintiff's Petition.

3.

Defendant denies "Paragraph 3" of Plaintiff's Petition.

4.

Defendant denies "Paragraph 4" of Plaintiff's Petition.

5.

Defendant denies "Paragraph 5" of Plaintiff's Petition.

6.

For want of sufficient information, Defendant can neither admit or deny "Paragraph 6" of Plaintiff's Petition.

7.

Defendant denies "Paragraph 7" of Plaintiff's Petition.

[fol. 24]

8.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 8" of Plaintiff's Petition.

9.

Defendant denies "Paragraph 9" of Plaintiff's Petition.

10.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 10" of Plaintiff's Petition.

11.

Defendant Denies "Paragraph 11" of Plaintiff's Petition.

12.

Defendant denies "Paragraph 12" of Plaintiff's Petition.

13.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 13" of Plaintiff's Petition.

14.

Defendant denies "Paragraph 14" of Plaintiff's Petition.

15.

Defendant denies "Paragraph 15" of Plaintiff's Petition.

16.

Defendant denies "Paragraph 16" of Plaintiff's Petition.

17.

Defendant denies "Paragraph 17" of Plaintiff's Petition.

18.

Defendant denies "Paragraph 18" of Plaintiff's Petition.

19.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 19" of Plaintiff's Petition.

20.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 20" of Plaintiff's Petition.

[fol. 25] 21.

For want of sufficient information, Defendant can neither admit nor deny "Paragraph 21" of Plaintiff's Petition.

22.

Defendant denies "Paragraph 22" of Plaintiff's Petition.

23.

Defendant denies "Paragraph 23" of Plaintiff's Petition.

Wherefore, Defendant prays judgment of the Court.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Defendant.

[fol. 26] *Duly sworn to by W. W. Law, jurat omitted in printing.*

[fol. 27]

SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

DEMURRER—Filed August 6, 1962

Now comes the National Association for the Advancement of Colored People, a New York corporation, one of the Defendants in the above styled case, and without waiving any of its rights to file pleas and answer, files this its general and special demurrers to the petition and for grounds, show as follows:

General Demurrer

Said petition does not as a whole, nor do any of its several paragraph or parts, show a cause of action against this defendant.

Special Demurrers

1. Defendant demurs to the allegations of paragraph eight (8) of the petition and moves to strike the same on the grounds that the allegations are irrelevant and constitute no part of plaintiff's alleged cause of action. Defendant demurs upon the further grounds that the said allegations are prejudicial.

2. Defendant demurs to that portion of the allegations of paragraph fifteen (15) of the petition which reads, "That all sorts of false and spurious accusations have been made against plaintiff by said defendants both before and after the trial of plaintiff in the Recorders Court of the City of Savannah irrespective of plaintiff's being discharged by the Court on the warrant brought against him", on the ground that said allegations are vague, indefinite, and incomplete, in that they fail to set out with any degree of particularly the nature and wording of the alleged false and spurious accusations.

[fol. 28] 3. Defendant demurs to that portion of the allegations of paragraph sixteen (16) of the petition and moves to strike the same which quotes "That the pickets are harassing and intimidating customers from going on the premises of the plaintiff by creating an atmosphere around plaintiff's premises of possible violence", on the grounds that nowhere in the petition are there facts alleged which would indicate that any of the defendants as named committed any such unlawful acts.

4. Defendant demurs to paragraph seventeen (17) of plaintiff's petition and moves to strike the same in that nowhere in said paragraph does plaintiff allege the time and place where the alleged acts occurred, of the persons who

were threatened with physical harm. Defendant further demurs to said paragraph on the ground that there are no facts alleged in the petition which would come within the scope of Section 54-801 of the Code of Georgia.

5. Defendant demurs to the allegations of paragraph nineteen (19) of the petition on the grounds that the same are vague, indefinite, lacking in clarity, and purely speculative, in that plaintiff does not allege any facts and figures which would show that he has suffered any loss in sales, and upon the further grounds that any allegations as to future loss of sales are purely speculative.

Wherefore, Defendant Prays, that said demurrer be sustained and action dismissed.

D. L. Hollowell, 859½ Hunter Street, N.W., Atlanta 14, Georgia; B. C. Mayfield, 910 West Broad Street, Savannah, Georgia; E. H. Gadsden, 458½ West Broad Street, Savannah, Georgia; Robert L. Carter, 20 West 40th Street, New York 18, New York, Counsel for Defendant.

[fol. 29] Certificate of Service (omitted in printing).

[fol. 58]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

MOTION TO DISMISS—Filed August 6, 1962

Now comes the Defendant in the above stated case and file this their motion to dismiss and show:

Defendants move to dismiss the petition and dissolve the temporary restraining order heretofore entered on the grounds that the petition fails to state a cause of action in that the Defendants have a right, protected by the Constitution of the United States, to engage in peaceful picket-

ing and other forms of peaceful activity designed to persuade the public not to patronize a commercial establishment that practices racial discrimination; and in engaging in these activities which form the basis of said petition and said temporary restraining order, Defendants were exercising a right of freedom of speech and assembly guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Georgia.

Wherefore, Defendants pray that said petition be dismissed and said temporary restraining order be dismissed.

D. L. Hollowell, 859½ Hunter Street, N.W., Atlanta 14, Georgia; B. C. Mayfield, 910 West Broad Street, Savannah, Georgia; E. H. Gadsden, 458½ West Broad Street, Savannah, Georgia; Robert L. Carter, 20 West 40th Street, New York 18, New York, Counsel for Defendant.

[fol. 59] [File endorsement omitted]

[fol. 60]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

[Title omitted]

ORDER ON DEMURRERS AND ON MOTION TO DISMISS—
June 20, 1963

In brief plaintiff's original petition alleges an intentional and wilful conspiracy upon the part of the defendants to put him out of business by means of mass picketing, the purpose of which was to induce and maintain a boycott against plaintiff's business. The petition further alleges that actual picketing of his business took place. The number of pickets was sufficient to constitute mass picketing by surrounding the premises and sidewalks adjacent thereto so as to prevent persons from entering plaintiff's

place of business to trade with him. The petition further alleges that the object of destroying plaintiff's business was furthered by pickets intimidating persons approaching plaintiff's store, by creating an atmosphere of violence around plaintiff's premises, by inciting and inflaming customers, and by spreading false and misleading statements as to to conduct of plaintiff, all of which caused customers of the plaintiff to be fearful of trading in his store. It was further alleged that the pickets threatened physical violence to plaintiff's employees in an attempt to force them to quit the employment of plaintiff. That all of this was without reason or justification and for the avowed purpose of putting the plaintiff out of business.

That as a result of the foregoing acts plaintiff incurred [fol. 61] a loss of sales each day and continues to incur said loss. Hence, it appears from the original petition that in carrying out the design of the conspirators damage was inflicted upon the plaintiff in loss of business. This would give the plaintiff a right of action. (See Brown v. Jacobs Pharmacy, 115 Ga. 429; Woodruff v. Hughes, 2 Ga. App. 361, where it is held that the "Gist of the action is not the conspiracy alleged but the tort committed against the plaintiff and the damage thereby done wrongfully.")

The allegations of conspiracy enable the plaintiff not only to hold the actual participants in the wrong but those who conspired to have it done though not actually present and participating in the act. (See Woodruff v. Hughes, supra.)

The petition alleges that a mass meeting was called by the Savannah Branch of the National Association for the Advancement of Colored People pursuant to circulars and that this meeting was led by the individual defendants, Law and Jaudon, who, individually and as agents and officers of the corporation, organized what was called a selective buying campaign to begin the next day and that the individuals in their individual and representative capacity of the corporations involved organized, placed the pickets, and instructed them what areas to picket and what method of ap-

proach to take in talking to plaintiff's customers and prospective customers in order to prevent said customers from trading with plaintiff.

Plaintiff's petition was amended, in which amendment the acts of the defendants were described as unlawful, wanton, wilful, and with malice, and knowingly with malice, and that the picketing continued from the 31st day of May to the filing of the suit. The allegations of the agency of the individual defendants as to the corporations involved [fol. 62] were spelled out in greater particulars by the amendment. The amendment likewise gave specific and definite allegations as to the loss suffered by the plaintiff in his business and the prayers of the petition were amended accordingly.

To the original petition each of the defendants, corporate and individual, filed separate but identical general and special demurrers. These demurrers were not renewed to the petition as amended. Defendant also jointly filed a motion to dismiss. The Court will in one order rule on the demurrers and the motion to dismiss as to all defendants.

In the Court's opinion the original petition and the petition as amended are sufficient to set out a cause of action against the defendants, both corporate and individual. The corporate defendants are alleged to have acted by and through their agents, Law and Jaudon, who were named officers of the corporations. In the amendment it is alleged that they acted within the scope of their employment and authority. In the absence of any special demurrer directed either to the petition as originally drawn or to the petition as amended, the agency of the defendants to bind the corporation is sufficiently alleged. (See Cooney v. Atlantic Greyhound Corp., 81 Ga. App. 324; Progressive Life Insurance Co. v. Doster, 98 Ga. App. 641.)

"Generally speaking, any person who is capable in law of being sued and who takes part in a conspiracy may be held civilly liable as a conspirator. A corporation may be a party to a combination or conspiracy with other corporations or persons which aims at and accomplishes injury to

other corporations or persons and may be held civilly liable for the resulting damages to the same extent as a natural person." (See Conspiracy, Section 47, 11 Am. Jur. 579-580.)

[fol. 63] The books are full of cases dealing with damages resulting from acts committed as the result of a conspiracy and it is not necessary for the Court to cite any other decisions than those above to sustain its rulings here.

Defendants' special demurrers are five in number. Demurrer numbered 3 complains that the named defendants are not alleged to have participated in any acts of harassment or intimidation. As pointed out above, a conspirator may be held liable for the acts of others in carrying out the design of the conspiracy though the particular conspirator is not present and does not take part in the actual perpetration of the act. He, being a conspirator, becomes jointly and severally liable for the acts of any of the conspirators.

Paragraph 17 of the plaintiff's petition must be construed in the light of the whole petition which alleges that on the day following the mass meeting which was on May 31, 1962, the pickets were put out and continued to picket until the filing of the petition on June 22. It is, therefore, evident that the threats against plaintiff's employees must have been made during this period. Therefore, special demurrer numbered 4 directed to this paragraph is without merit.

While the demurrer is not directed to this point, it might be well to point out that a conspiracy to induce employees to decline to longer continue in the employ of a party is, if it results in damage, actionable. (Employing Printers Club v. Dr. Blosser Co., 122 Ga. 509 (1).

Special demurrer numbered 5 is met by amendment, paragraph 6 of which amendment specifically sets out the loss suffered by plaintiff.

Paragraph 8 of plaintiff's petition is not necessary in that the picketing and the damage resulting therefrom began before the events referred to in that paragraph. The lan-

[fol. 64] guage complained of in defendants' second demurrer is not necessary to any recovery because the picketing, harassment, and intimidation had begun before the false and spurious accusations in regard to the trial of the defendant in Police Court. Therefore, special demurrers numbered 1 and 2 of defendants are good, and paragraph 8 and the language complained of in paragraph 15 of plaintiff's petition should be stricken.

From what has been said above, it is, therefore, Considered, Ordered, And Adjudged that the defendants' general demurrer and defendants' special demurrers numbered 3, 4, and 5 be and the same are hereby overruled as to plaintiff's petition as amended.

It Is Further Considered, Ordered, And Adjudged that defendants' special demurrers numbered 1 and 2 be sustained and paragraph 8 of plaintiff's petition be stricken and the language complained of in paragraph 15 of said petition be likewise stricken.

Simultaneously with filing the demurrers, defendants filed a joint motion to dismiss. This motion is predicated on two contentions, racial discrimination and the guarantee of free speech by the Constitution of the United States.

In considering such a motion, as against demurrer, the allegations of plaintiff's petition must be taken as true. These allegations show that two-thirds of the plaintiff's customers were negroes, that he has in his employ at least one negro, the boy who was discharged and allegedly beaten by the plaintiff. How can it then be said as a matter of law that the plaintiff was discriminating against members of the negro race? Certainly not in his business or selling because they constituted the majority of his customers.

The mere fact that members of different races have differences or altercations or even a fight or one commits as-
[fol. 65] sault and battery upon the other does not as a matter of law constitute discrimination against either race. Defendants by their own demurrers sought to strike from the pleadings any reference to the court proceeding and

thus cannot complain of any discrimination shown in the administration of the laws as between the two individuals. Besides, discrimination against a race must be evidenced by many and continuous acts, not by a single one, and the only act alleged against the negro race was the alleged beating of the discharged employee. A single swallow does not make a summer.

Turning now to the First Amendment to the Constitution of the United States guaranteeing freedom of speech, the interpretation of that amendment is that so long as the speech or written article is true, it is, of course, guaranteed. While the demurrers complained of allegedly false statements in regard to the result of the Police Court hearing, there is no demurrer challenging the allegations in paragraph 16 of the plaintiff's petition that the "pickets incited and inflamed customers and the public by false and misleading statements regarding the conduct of plaintiff". These allegations were challenged only on the ground that they did not connect the defendants with them, which contention has been answered in the ruling on the demurrers.

While physical picketing is allowed and banners or signs stating true facts and positions of the various parties involved cannot be restrained, nevertheless, the law does not place its stamp of approval upon falsity. The laws against libel and slander are eloquent testimonials that freedom of speech does not give one the right to speak falsely of another with intent to injure. The allegations of this petition would not justify this Court in sustaining the motion [fol. 66] to dismiss on the theory that the acts complained of were protected by the Constitutional guarantee of free speech when it is alleged that the speech was false. Nor can the Court see in the allegations of the petition any violation as against the defendants of any provision of the Fourteenth Amendment to the Constitution of the United States.

It Is, Therefore, Considered, Ordered, And Adjudged that the motion to dismiss be and the same is hereby overruled.

In Open Court this 20th day of June, 1963.

Edwin A. McWhorter, Judge Superior Court,
E. J. C., Georgia.

cc—Messrs. Dickey, Futrell and Barker
cc—Mr. E. H. Gadsden
cc—Mr. B. C. Mayfield

[File endorsement omitted]

[fol. 67]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

State of Georgia
County of Chatham

#2978

HALDRED OVERSTREET,

VS.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a New York Corporation, d/b/ in Georgia, et al.

VERDICT OF JURY—November 14, 1963

We, the jury, find in favor of the plaintiffs and against the five (5) defendants collectively.

1. We hereby grant the permanent injunction prayed for.
2. We hereby award the plaintiff the following amounts:

A. Compensatory damages	$35,793.05
B. Punitive damages	50,000.00
Total	$85,793.05

William P. Haynes, Foreman.
November 14, 1963.

Verdict of Jury dated November 14, 1963.

[fol. 68]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

MOTION FOR NON SUIT—Filed November 14, 1963

Comes Now, National Association for the Advancement of Colored People, a New York Corporation, and moves the Honorable Court to enter a Non Suit in the above styled case and for grounds shows:

1.

The record is devoid of any legal evidence which was elicited during the trial which established that Defendant, W. W. Law, was an agent or a general agent of said corporation.

2.

Plaintiff has failed to make a prima facie showing that the National Association for the Advancement of Colored People, a New York corporation, did any act, legally or illegally, which gave rise to any damage to the plaintiff as alleged.

3.

Plaintiff has failed to make a prima facie showing that any of the other defendants while acting as an agent for said corporate defendant committed any act, legally or illegally, which resulted in damage to the plaintiff as alleged.

Wherefore, Defendant prays that the foregoing Motion for Non Suit, be granted and the petition be dismissed as to it.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Defendants.

[fol. 69]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NON-SUIT—
November 14, 1963

The within motion for non-suit is overruled on each and every ground.

In Open Court this 14th day of November, 1963.

Edwin A. McWhorter, Judge, Superior Court, E.J.C., of Georgia.

[fol. 78]

State of Georgia
County of Chatham

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

Case No. 2978

HALDRED OVERSTREET

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW, AND REV. F. D. JAUDON

JUDGMENT OF COURT—November 18, 1963

The above captioned case having come on for trial and the jury having returned a verdict as follows:

"We, the jury, find in favor of the plaintiff and against the five (5) defendants collectively.

1. We hereby grant the permanent injunction prayed for.

2. We hereby award the plaintiff the following:

(A) Compensatory damages $35,793.05

(B) Punitive damages $50,000.00

Total: $85,793.05

/s/ W. P. Haynes
Foreman

November 14, 1963"

The above verdict of the jury is hereby made the judgment of this court.

This 18th day of November, 1963.

Edwin A. McWhorter, Judge, Eastern Judicial Circuit of Georgia.

[File endorsement omitted]

[fol. 79]

In the Superior Court of Chatham County

[Title omitted]

Motion for New Trial—Filed November 21, 1963

Verdict for Haldred Overstreet at November term, 1963, of Court, on the 14th day of November, 1963.

The National Association For The Advancement of Colored People, a New York Corporation being dissatisfied with the verdict in said case, comes now within 30 days of the rendition of the same, and moves the court for a new trial, upon the following grounds, to wit:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of the evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

Wherefore, movant prays that these its grounds for a new trial, be inquired of by the court, and that a new trial be granted.

D. L. Hollowell, B. C. Mayfield, E. H. Gadsden, Robert L. Carter, Attorneys for Movant.

[fol. 80]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

ORDER ON MOTION FOR NEW TRIAL—November 21, 1963

The foregoing motion read and considered. Let the same be filed and served upon counsel for petitioner, and let the counsel for the petitioner show cause before me on the 23 day of January, 1964, at 10 o'clock, a.m., at my office in the Chatham County courthouse, Savannah, Georgia, why the motion should not be granted.

Let this order act as a supersedeas until further order of court. In the meantime and until the final hearing of said motion, whenever the same may be had, movant is allowed to amend and perfect the motion, and to prepare and present for approval, a brief of the evidence, which brief of evidence may be filed in the clerk's office at any time within 10 days after the motion is heard and determined.

If, for any reason, said motion is not heard and determined at the time and place above fixed, it is ordered that the same be heard and determined at such time as may be agreed upon by counsel, and upon failure to agree, then at such time and place as the presiding Judge may fix, on the application of either party, of which time and place the opposite party shall have at least five days' notice; and if for any reason this motion is not heard and determined

before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at any term thereafter.

This 21 day of November, 1963.

Edwin A. McWhorter, Judge Superior Court, Eastern Judicial Circuit.

Due and legal service of the within motion and order acknowledged, time, copy and all other and further service waived. This 21 day of November, 1963.

R. E. Barker, Attorney for Plaintiff.

[fol. 104]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER ON MOTION FOR NEW TRIAL—September 24, 1964

The matter is before the Court on motion for new trial. The amended petition proceeded on its theory of a conspiracy with intent to destroy plaintiff's business. The general nature of the case and the problems confronting the Court were discussed and ruled upon in its order on demurrers.

The most comprehensive case the Court has found dealing with civil conspiracy is that of Cook v. Robinson, et al., 216 Ga. 328. In headnote 3 it is stated:

"The conspiracy may be pleaded in general terms, and this is true although the jurisdiction of the court to render judgment against one or more of the defendants depends upon allegations and proof of the conspiracy."

In the next headnote the Court states:

"But, where a cause of action is alleged, the fact of conspiracy, if proved, makes any actionable deed by one of the conspirators chargeable to all. The liability is joint and several."

In the last of the fifth headnote the Court states:

> "It is sufficient that two or more persons in any manner either positively or tacitly come to a mutual understanding that they will accomplish the unlawful design. And anyone, after a conspiracy is formed, who knows of its existence and purposes and joins therein, becomes as much a party thereto—as if he had been an original member."

[fol. 105] In Horton v. Johnson, 192 Ga. 338, on page 346, concerning the proof of conspiracy, the Court said or quoted authority to this effect:

> " 'In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them and are entitled to consider every fact in issue and which will enable them to come to a satisfactory conclusion.' "

In reference to a conspiracy, this Court would paraphrase Code Section 37-706 and say:

> "A conspiracy may not be presumed, but, being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence."

In Huckaby v. Griffin Hosiery Mills, 205 Ga. 88, on page 91 the Court said:

> "A conspiracy or common intent may be shown to have existed between parties by proof of acts and conduct and it may be shown by circumstantial or direct evidence. The law recognizes the intrinsic difficulty of proving a conspiracy—The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances."

See also Nobles v. Webb, 197 Ga. 242, on page 245.

One of the objections to the Court's charge (see Ground 14 of the amended motion) was, "As the Court sees it, you cannot get agency and conspiracy separated in this case." The Court does not consider this error because in proving a conspiracy you prove agency if the acts are committed in furtherance of the conspiracy, and thus a co-conspirator who may be absent becomes bound by the overt act committed by one of the conspirators. Nor does the fact that the neighborhood was already incensed and that the action of the defendants to this cause only endorsed and supported that which was already in progress relieve them of liability. (see Ground 1 of the amended motion.

[fol. 106] With this preface the Court will pass upon the several grounds of the motion for new trial.

The general grounds are hereby overruled because the evidence, in the Court's opinion, was sufficient to authorize the verdict.

The grounds of the amended motion will be referred to consecutively.

Ground 1 of the amended motion is overruled.

Ground 2 is overruled.

Ground 3 is overruled. The defendant Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of these remarks were made by the pickets.

Ground 4 is overruled.

Ground 5 is overruled for it clearly appears that the presence of the pickets incited, not only in the instance complained of but in others, acts of violence around the plaintiff's place of business.

Ground 6 is overruled. The Court reiterates that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about the plaintiff's place of business, the pickets and those responsible for them would be liable if the picketing was not justified or amounted to mass picketing.

Ground 7 is overruled.

Ground 8 is overruled.

Ground 9 is overruled.

Grounds 10 and 11 complained about the Court's refusal to grant a nonsuit. These are not proper grounds to be included in the motion for new trial. Reserve Insurance Co. v. Foster, 96 Ga. App. 337 (2); Crawley v. Selby, 208 Ga. 531 (1).

Ground 12 is overruled.

Ground 13 is overruled.

Ground 14 is overruled.

[fol. 107] Ground 15 is overruled.

Ground 16 is overruled.

Ground 17 is overruled.

Ground 18 is overruled.

Ground 19 is overruled.

Ground 20 is overruled.

Ground 21 is overruled.

Ground 22 is overruled.

Ground 23 is overruled.

Ground 24 is overruled.

In view of the prefatory remarks hereinbefore made, the Court deems it not necessary to give its reasons for its ruling on each of the various grounds for new trial contained in the original and amended motion.

It Is, Therefore, Considered, Ordered, And Adjudged that the Court having overruled each and every ground of the motion and the amended motion for new trial, a new trial is hereby denied to the defendants in this cause.

In Open Court this 24th day of September, 1964.

Edwin A. McWhorter, Judge Superior Court, E.J.C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

[fol. 108]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER VACATING ORDER ON MOTION FOR NEW TRIAL—
October 2, 1964

On the 24th day of September, 1964, the Court entered an order overruling the motion and the amended motion for new trial and denying a new trial in the above entitled cause. Said order was filed in the Clerk's Office of this Court and appears in Minute Book 223, Folio 286.

It has been the custom of this Court immediately upon entering orders to mail copies thereof to the attorneys. Upon investigation the Court finds that through inadvertence copies of the order above referred to denying a new trial were not mailed to the attorneys, one of whom, at least, resides in Atlanta. To mail copies of the order now would be to deprive the parties ruled against of eight days in which they are allowed by law to except by bill of exceptions to the ruling of the Court. This would be manifestly unfair as counsel rely upon the Court mailing copies of orders and do not watch the Clerk's office.

In view of the above and at the same term of Court at which the order denying motion for new trial was entered, It Is Considered, Ordered, And Adjudged that the order denying a new trial in this case be and the same is hereby revoked and vacated.

In Open Court this 2nd day of October, 1964.

Edwin A. McWhorter, Judge Superior Court, E. J. C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

[fol. 110]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

ORDER ON MOTION FOR NEW TRIAL—October 9, 1964

The matter is before the Court on motion for new trial. The amended petition proceeded on its theory of a conspiracy with intent to destroy plaintiff's business. The general nature of the case and the problems confronting the Court were discussed and ruled upon in its order on demurrers.

The most comprehensive case the Court has found dealing with civil conspiracy is that of Cook v. Robinson, et al., 216 Ga. 328. In headnote 3 it is stated:

> "The conspiracy may be pleaded in general terms, and this is true although the jurisdiction of the court to render judgment against one or more of the defendants depends upon allegations and proof of the conspiracy."

In the next headnote the Court states:

> "But, where a cause of action is alleged, the fact of conspiracy, if proved, makes any actionable deed by one of the conspirators chargeable to all. The liability is joint and several."

In the last of the fifth headnote the Court states:

> "It is sufficient that two or more persons in any manner either positively or tacitly come to a mutual understanding that they will accomplish the unlawful design. And anyone, after a conspiracy is formed, who knows of its existence and purposes and joins therein, becomes as much a party thereto—as if he had been an original member."

[fol. 111] In Horton v. Johnson, 192 Ga. 338, on page 346, concerning the proof of conspiracy, the Court said or quoted authority to this effect:

> "'In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them and are entitled to consider every fact in issue and which will enable them to come to a satisfactory conclusion.'"

In reference to a conspiracy, this Court would paraphrase Code Section 37-706 and say:

> "A conspiracy may not be presumed, but, being in itself subtle, slight circumstances may be sufficient to carry conviction of its existence."

In Huckaby v. Griffin Hosiery Mills, 205 Ga. 88, on page 91 the Court said:

> "A conspiracy or common intent may be shown to have existed between parties by proof of acts and conduct and it may be shown by circumstantial or direct evidence. The law recognizes the intrinsic difficulty of proving a conspiracy—The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances."

See also Nobles v. Webb, 197 Ga. 242, on page 245.

One of the objections to the Court's charge (see Ground 14 of the amended motion) was, "As the Court sees it, you cannot get agency and conspiracy separated in this case." The Court does not consider this error because in proving a conspiracy you prove agency if the acts are committed in furtherance of the conspiracy, and thus a co-conspirator who may be absent becomes bound by the overt act committed by one of the conspirators. Nor does the fact that the neighborhood was already incensed and that the action of the defendants to this cause only endorsed and supported that which was already in progress relieve them of lia-
[fol. 112] bility. (see Ground 1 of the amended motion.

With this preface the Court will pass upon the several grounds of the motion for new trial.

The general grounds are hereby overruled because the evidence, in the Court's opinion, was sufficient to authorize the verdict.

The grounds of the amended motion will be referred to consecutively.

Ground 1 of the amended motion is overruled.

Ground 2 is overruled.

Ground 3 is overruled. The defendant Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of these remarks were made by the pickets.

Ground 4 is overruled.

Ground 5 is overruled for it clearly appears that the presence of the pickets incited, not only in the instance complained of but in others, acts of violence around the plaintiff's place of business.

Ground 6 is overruled. The Court reiterates that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about the plaintiff's place of business, the pickets and those responsible for them would be liable if the picketing was not justified or amounted to mass picketing.

Ground 7 is overruled.

Ground 8 is overruled.

Ground 9 is overruled.

Grounds 10 and 11 complained about the Court's refusal to grant a nonsuit. These are not proper grounds to be included in the motion for new trial. Reserve Insurance Co. v. Foster, 96 Ga. App. 337 (2); Crawley v. Selby, 208 Ga. 531 (1).

Ground 12 is overruled.

Ground 13 is overruled.

Ground 14 is overruled.

[fol. 113] Ground 15 is overruled.

Ground 16 is overruled.

Ground 17 is overruled.

Ground 18 is overruled.

Ground 19 is overruled.

Ground 20 is overruled.

Ground 21 is overruled.

Ground 22 is overruled.

Ground 23 is overruled.

Ground 24 is overruled.

In view of the prefatory remarks hereinbefore made, the Court deems it not necessary to give its reasons for its ruling on each of the various grounds for new trial contained in the original and amended motion.

It Is, Therefore, Considered, Ordered, And Adjudged that the Court having overruled each and every ground of the motion and the amended motion for new trial, a new trial is hereby denied to the defendants in this cause.

In Open Court this 9th day of October, 1964.

Edwin A. McWhorter, Judge Superior Court, E. J. C., Georgia.

cc—Messrs. Dickey, Futrell & Barker
Mr. B. Clarence Mayfield
Mr. E. H. Gadsden
Mr. D. L. Hollowell

Order on Motion for New Trial filed in this office October 9, 1964, by F. W. Dasher, Jr., Deputy Clerk, Superior Court, Chatham County, Georgia.

The Original Motions for New Trial filed by the defendants, with all orders and entries of service thereon including acknowledgments of service and entries of filing.

[fol. 114]

IN THE SUPERIOR COURT OF CHATHAM COUNTY

[Title omitted]

EXCERPTS FROM AMENDMENT TO THE ORIGINAL MOTION FOR A NEW TRIAL—April 20, 1964

* * * * * * *

[fol. 119] Ground 6

Because the following material evidence was illegally admitted by the court to the jury, over the objection of movants, to-wit: The court permitted the jury to retire.

"The Court: As I understand the plaintiff's position in this case is they are trying to show that these acts of violence were connected with the pickets or inspired by the pickets.

Attorney Barker: Yes, sir. (Brief of Evidence page 102.)

The Court: Well, I've got some doubts about it, but I'm going to admit it and limit it to the time that the pickets

were actually there in and about the store or around it, or the corners of the streets. I'm not going to let you go in after the injunction. Just simply show that there was an atmosphere of violence after the boycott stopped that hadn't existed before. Now leaving the inference to the jury as to whether it was the result of any direction on the part of the defendants in the case. You have made your objection; have noted for the record, I have a good deal of doubt about it, but it looks like somewhere you've got to draw the line. And the law does require some certainty, of course. You just can't go all over the world. Just be careful and limit it to that. Now let's understand that your objection goes right on.

[fol. 120] Attorney Hollowell: Thank you, sir. So that the record—we understand that all matters relating to the types of questions that are being asked and which are eliciting these general acts of violence, that I have a standing objection.

The Court: That's right. So note it, Mr. Reporter. (Brief of Evidence page 111.)

(a) As indicated by the statements above movants then objected to all future evidence as to general acts of violence unconnected to the defendants. The court agreed that movants objections to all such acts would be noted.

(b) The opposing party to movants offered the evidence objected to.

(c) The court overruled the objection and admitted the evidence. (See Brief of Evidence page 110.)

(d) The evidence was material, prejudicial and hurtful to the movants, for the following reasons: The evidence offered permitted the jury to infer that the acts of violence testified to were attributable to the defendants even though there was no testimony to specifically connect the acts with the defendants.

(e) The name of the witness whose testimony is alleged to have been illegally admitted over valid objection is Wilma Love.

(f) Movants aver that the inadmissibility of the evidence was beyond doubt.

• • • • • • •

[fol. 123] Ground 10

Because the court erred in refusing to allow movants oral motion for non-suit submitted at the close of plaintiff's evidence as to defendants National Association For The Advancement of Colored People, Incorporated; • • • said motion for the non-suit being based upon the premise that the evidence showed no relationship of agency between the individual defendants and the above named corporate defendants and its associated branches other than by the declaration of the individual defendants, W. W. Law, and Rev. F. D. Jaudon. (Brief of Evidence pages 315 to 328.)

• • • • • • •

[fol. 124] Ground 12

Because the court erred in refusing to allow movants' motion for a directive verdict submitted at the close of all evidence as to each defendant, said motion being based upon the grounds that plaintiff's had not carried the burden of proof to establish that he was entitled to a judgment against any of the defendants. The evidence failed to show a conspiracy between any of the defendants; it failed to show an agency relationship between the individual defendants, the corporate defendants and the unincorporated association; • • •

Ground 13

Because the court erred in charging the jury as follows: "Did they participate through their agents and members and people who had a right to bind them in this conspiracy? Was this conspiracy carried out by members of the local organization? Was what took place a result of their activities and the placing of the pickets at the various corners? I don't think—and I charge you—that the mere fact that

there had been protests made before the meeting of the Association, there has been indignation expressed by a group of people, and certain action taken, would not prevent the organization or the parties from conspiring. They could have joined the movement and been just as guilty of a [fol. 125] conspiracy as if they had initiated it. But did they do it? Those are the facts for you to determine. Now was the purpose of the conspiracy legal or illegal? Did these people have a right as a result of an individual altercation, of an altercation between two individuals, however, unjust it might have been or appear to have been, did they have the right to take concerted action against the individual who is alleged to have committed the abuse?

Movants aver that such charge was erroneous and injurious to them because:

(a) It was misleading in that the evidence adduced at the trial was that admittedly the Georgia State Conference of the N. A. A. C. P. did work and operate under the auspices of the N. A. A. C. P., a corporation, but the alleged conspiracy was not condoned or sanctioned by the N. A. A. C. P., a corporation, neither did the N. A. A. C. P., a corporation have knowledge of any planned boycott, neither was there any evidence that the people who gathered on the various corners and set themselves "up" as pickets were members or agents of any branch of the N. A. A. C. P., a corporation, N. A. A. C. P., Georgia State Conference, N. A. A. C. P., Savannah Branch, all of which renders this portion of the charge misleading and vague.

(b) That is, it was confusing to the jury.

(c) That it was also erroneous for the following reasons: It was incumbent upon the petitioner to establish by evidence that the pickets were agents of one of the N. A. A. C. P., divisions or branches, and acting within the scope of the authority or pursuant to established or sanctioned policies of said organization.

Ground 14

Because the court erred in charging the jury as follows: "As the court sees it, you can't get agency and conspiracy separated in this case."

Movants aver that said charge was erroneous and not sound as an abstract principle of law.

[fol. 126]

Ground 15

Because the court erred in charging the jury as follows: "I charge you that in this case you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organization; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted."

Movants aver that such charge was erroneous and injurious to them because:

(a) It deprived defendants of rights of freedom of speech in violation of the First and Fourteenth Amendments of the United States Constitution, since the charge implied that if unlawful conduct was "incited by the pickets by their mere presence," defendants would somehow be responsible for such conduct.

(b) It deprived the defendants of rights and property without due process of law in violation of the Fourteenth Amendment of the United States Constitution, since it implied to the jury that if unlawful acts were "incited by the pickets by their mere presence," defendants would be the proximate cause of any unlawful acts which occurred.

• • • • • • •

[fol. 127]

Ground 17

The verdict is erroneous because it deprives the defendant N.A.A.C.P., Inc. of rights and property without due process of law in violation of the Fourteenth Amendment

to the United States Constitution, in that the evidence shows that it had no knowledge of the picketing involved (Brief of Evidence, page 46); and did not approve or disapprove the action of the Savannah Branch. (Brief of Evidence, page 48.)

• • • • • • • •

[fol. 128] Ground 22

Because the court erred in giving the following charge to the jury: "Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injury plaintiff in his business and by illegal acts did in fact injured him."

Movants aver that said charge was erroneous and not sound as an abstract principle of law.

• • • • • • • •

[fol. 129] Wherefore, Movants pray that these, their additional grounds of motion for a new trial, be inquired of by the court, approved and allowed, and that a new trial be granted them.

B. C. Mayfield, E. H. Gadsden, D. L. Hollowell, Attorneys for Movants.

The defendants listed in this amended motion for new trial each filed individually a skeleton motion for new trial, and by consent of parties and order of Court they are allowed to unite in one amended motion for new trial.

In Open Court this 20th day of April, 1964.

Edwin A. McWhorter, Judge, Superior Court, E. J. C. of Ga.

[fol. 133]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

Case No. 2978.

HALDRED OVERSTREET,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: THE GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: THE SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; W. W. LAW; and REV. F. D. JAUDON.

Transcript of Hearings

Transcript of hearing held in the above stated case November 12th, 13th and 14th, 1963, before the Honorable Edwin A. McWhorter, Judge of the Superior Court, Eastern Judicial Circuit of Georgia.

APPEARANCES:

For the plaintiff: Robert E. Barker, Esq., Grady Dickey, Esq., Savannah, Georgia.

For the defendants: Eugene H. Gadsden, Esq., B. Clarence Mayfield, Esq., Savannah Georgia. Donald L. Hollowell, Esq., Atlanta, Georgia.

[fol. 152] MR. WESLEY W. LAW took the stand for the purpose of cross examination, was sworn, and testified as follows:

Cross examination.

By Attorney Barker:

Q. Would you state your name for the record please?
A. Wesley W. Law.

Q. I believe you'll have to speak up just a little bit louder. There's some outside noise, and I don't believe this gentleman back here can hear you.

A. My name is W. W. Law.

Q. And what is your address?

A. 2009 Florence Street.

Q. And where are you employed?

A. United States Post Office, Savannah.

Q. Do you have any connection with the—what is commonly known as the NAACP, the National Association for the Advancement of Colored People?

A. Yes, I do.

Q. Would you state to the Court your connection with this organization?

A. I am president of the Savannah branch of the National Association for the Advancement of Colored People; I am president of the Georgia State Conference of NAACP.

Q. Now would the Georgia State Conference of the NAACP be all of the branches within the State of Georgia?

[fol. 153] A. It would.

Q. Now what affiliation do the local branch and the state branch have with the national association, a New York corporation?

A. Would you state that question again?

Q. What affiliation do the local branches within the State of Georgia and the state branch as a whole have with the national association, a New York corporation, located I believe in New York City?

A. Well, the local branch would be a unit of the Association.

Q. Do you receive orders or counsel by the national association?

A. Only through the annual convention of the association.

Q. At this annual convention are you—

A. The annual convention and the actions of the Board of Directors.

Q. At this annual convention are you counseled in methods of furthering your efforts in the local district?

A. There are some discussions.

Q. Are you counseled by the officers and directors and the representatives of the national association?

A. I don't quite know whether counsel would be the word. As I say, there would be workshops and discussions.

Q. And who would conduct these workshops?

[fol. 154] A. They may be conducted by members of the staff or they may be conducted by leaders from various communities.

Q. At this annual convention or—what was the word you used? The annual get-together for the NAACP? Annual—

A. Annual conference or convention.

Q. Annual conference. It is arranged and set-up by the national president and directors of the national association, so, therefore, they would be directly responsible for the workshops, or they would be directly responsible for having the workshops set up?

A. Yes.

Q. You also stated that you were the president of the local association. Is the local association a corporation?

A. It is not.

Q. You are affiliated with the national association, is that correct?

A. Yes.

Q. Is the state association a corporation?

A. It is not.

Q. You are also affiliated through the state and local under the national corporate charter corporated in New York—

A. Yes.

Q. —or incorporated in New York?

A. Yes.

[fol. 155] Q. You are a resident, personally, of Savannah, Chatham County, Georgia?

A. I am. All my life.

Q. On or about May 31st, 1962, did you attend a meeting for the National Association for the Advancement of Colored People at Saint Phillips Monumental Church?

A. I did.

Q. And who is the pastor of Saint Phillips Monumental Church?

A. The Reverend F. D. Jaudon.

Q. Does the Reverend F. D. Jaudon hold any position in the local branch of the NAACP?

A. Yes, he does.

Q. Would you state that position?

A. He is the first vice president.

Q. What was the purpose of this meeting on May 31st, 1962, at the Saint Phillips Monumental Church?

A. To receive reports from members of the neighborhood in and surrounding the Tropical Market and to hear from the mother of Robert Lee Bolton.

Q. Prior to this meeting— the beating allegedly occurred on May 30th, 1962, is that correct?

A. That's correct.

Q. And the meeting was then called for May 31st, 1962, at eight o'clock?

[fol. 156] A. Yes.

Q. And you had spoken to the mother of Robert Bolton, I believe is the name?

A. I had not spoken to her, but someone in the office had; yes.

Q. And did you yourself call the meeting?

A. It was done with my approval.

Q. Did you also approve the bulletin to be distributed among the members or the people of Savannah, "NAACP mass meeting tonight, Saint Phillips Monumental AME Church on Park Avenue and Jefferson Street, Reverend F. D. Jaudon, pastor, at eight o'clock," and then in capital letters, "Protesting the beating of a fourteen year old Negro boy by the owner of the Tropical Market, 1601 Montgomery Street, corner of 32nd Street. Come get the truth about the brutality that sent this boy to the hospital where

he remains a patient. Come tonight, 8 p.m." Now did you authorize this bulletin or circular?

A. It was done in our office.

Q. And did you authorize it?

A. I had no objection to it. I believe it was done while I was at work.

Q. Did you authorize the wording of this circular?

A. It has my approval.

Q. It had your approval at the time of the printing?

[fol. 157] A. Well, that, I am not sure, but surely I made no objection to it.

Q. Do you know where this circular was printed?

A. In the branch office.

Q. So this would be a direct action of the local branch of the NAACP, an affiliate of the National Organization for the Advancement of Colored People, a New York corporation?

A. It would be.

* * * * * * *

[fol. 165] Q. Now were—the pickets that were at the Tropical Market were there under your direction and under the direction of the NAACP and—the NAACP?

A. Oh, yes.

Q. So, therefore, you would be responsible for the actions of the pickets at the Tropical Market?

The Court: Wouldn't that also call for an opinion that must be drawn by the jury.

Attorney Barker: I'm sorry. I will withdraw that question.

The Court: Defense counsel aren't making any objection, but the question of agency is in the case. You're alleging agency.

* * * * * * *

[fol. 182] Q. Did you make a report of this action on the part of the local branch of the NAACP to the National Association for the Advancement of Colored People?

A. Not until the injunction was served.

Q. And would you have in the normal course of business of running the local branch make this report of the actions of the local branch to the national branch?

A. As a part of our annual activities.

Q. And was there any disavowment on the part of the national branch of the Association for the Advancement of Colored People of the action that the local branch had taken in this one incident?

A. I know of none.

[fol. 183] Q. You received—if any were to be sent, would they through the normal course of business be sent to you as president?

A. I would think so.

* * * * * * *

Q. Have you ever received any communications from the national chapter or the national corporation of—with anything with regards to this action on the part of the local branch? In other words, did they approve of your actions here on the local level?

A. I have stated that the first knowledge they had of the action was when the injunction was served against the National Association, and it was necessary for us to transmit to them the injunction papers.

Q. Did the national branch at that time approve of the action that had been taken by the local branch?

A. I don't really believe that that entered into the situation at all.

[fol. 184] Q. Through any conversations or communications with the officers of the national branch did they express any approval of this action?

A. I don't believe I've had any experience of that sort.

Q. But no disapproval whatsoever?

A. As I have indicated, the only thing that I can testify to is the fact that they received the restraining order that had been served upon me.

Q. The members that took part in the picketing of the

Tropical Market were local members of the National Association for the Advancement of Colored People?

A. Yes.

* * * * * * * *

[fol. 333] EXCERPTS FROM TESTIMONY OF MRS. ALLIE COX

Q. All right. Now how many of the people that you say that were standing around at these distant places did you hear tell a customer this?

A. How many people did I hear them—how many people did I hear tell them that?

Q. Yes.

[fol. 334] A. Why there was plenty of them.

Q. How many—

A. W. W. Law was on the corner for one.

Q. Ma'am.

A. W. W. Law was on the corner.

Q. When did you see him on the corner?

A. When did I see him—evening after evening. I know him when I see him.

Q. Well, I mean let's—give me some reference as to time?

A. As to time?

Q. Yes.

A. Late in the afternoons he would come out on the corner where the picketers were.

Q. Late in the afternoon you would see him come out on the corner?

A. Oh, yes.

Q. All right. And what would he do?

A. He would stand up and talk to the picketers.

Q. All right. You've seen him stand up and talk—

A. Yes.

Q. And that's all you ever saw him do?

A. I've seen him stand up and talk to them, and the customers would start in the store and he'd be standing right there, and these boys would call them out and he was [fol. 335] standing there with them.

Q. I see. He would call out—these people that you say—

A. That were with him would call they out, and he would be standing there with them.

Q. I see. But they would call from the location where they were, is that right?

A. They would call—they would call them from the location, and if they went in the store, they'd go to the—as far as the door and tell them to get out of there, it was off limits. And they made them get out and not go back in.

Q. I see. They came in and got them by the arm and say, "Come on out here."

A. No, I didn't say that. I said they'd go to the sidewalk and call them out.

Q. Oh, to the sidewalk?

A. That's what I said.

Q. You mean to the edge of the side of the curb—

A. To the front of the store on the sidewalk, and called them out.

Q. The curb—the—where the sidewalk and the curb.

A. That's right.

Q. I see. Who did you see do that?

A. Who did I see?

[fol. 336] Q. Whom did you see? Name me one.

A. The one that was call—

Q. Name me one.

A. Drayton for one.

Q. Who?

A. Drayton.

Q. Who's Brayton?

A. Drayton.

Q. Drayton?

A. Drayton.

Q. Can you spell it?

A. I don't know whether I can spell it or not, but that's his name, Drayton.

Q. Who is he?

A. He was one of the main head leaders.

Q. How do you know that?

A. Because he was always there. He stayed there day and night.

Q. Did he ever come in and buy anything in your store?

A. No, never did.

Q. Did he ever grab anybody and tell them not to go in there? No, he never did.

A. He would follow them as far as the sidewalk—

[fol. 337] Attorney Barker: May it please the Court, now he's beginning to testify; I'm the one only in the courtroom that's supposed to be able to do that.

The Court: Don't answer for the witness.

Attorney Hollowell: Very well, Your Honor. Would the reporter read the question.

Reporter: Did he ever grab anybody and tell them not to go in there? No, he never did.

Attorney Barker: And I believe, sir, she was continuing with an explanation.

Attorney Hollowell: She hadn't even answered that yet. I withdraw it—

The Court: You've asked that question many times.

Attorney Hollowell: Not as to Drayton, sir.

The Court: No, not as to Drayton, but you've asked it many times—

Attorney Hollowell: She specified Drayton.

The Court: —and you're wearing the patience of the Court out. You have a right to cross examination, but the Court doesn't have to sit here and let you go on for hour after hour.

Attorney Hollowell: I understand that, Your Honor, and [fol. 338] counsel certainly doesn't want to wear on the patience of the Court, but I submit that we have sort of—a witness that—

The Court: You've gone over this thing over and over again, and I'm warning you now not to be going over it so much.

Attorney Hollowell: Very well, sir.

The Court: Now you asked her specifically as to Drayton.

Attorney Hollowell: That's correct, sir.

The Court: What he's trying to get from you, Mrs. Cox, did you ever see Drayton put his hand or use force to keep anyone from going in the store.

The Witness: No, sir; I never did see him hit nobody, but he would stand on the corners and tell them to not to go in there, that that place was off limits, and he mean not to catch none of them in there. Now that's all I saw and heard.

The Court: You heard him make those—

The Witness: I heard him make them remarks time and time again.

Q. To whom did he make them?

A. To the colored customers that would start in the store.

Q. What do you mean start in the store? Did he make [fol. 339] that when they were on the corner?

A. No. They'd be going in the store, and he would call them out.

Q. He would call them out. And they would come?

A. That's right. They would come; yes, sir.

* * * * * * *

[fol. 453]

MOTION FOR NON-SUIT AND RULING THEREON

Attorney Gadsden: If Your Honor please, in view of the fact that the plaintiff has rested his case, we respectfully move for a non-suit on the ground that there hasn't been any evidence here presented by the petitioner to show that the National Association for the Advancement of Colored People, Incorporated, neither that its associated branches or has the local conference been engaged in any acts as alleged by the petition. The only evidence educed here has simply shown that the petitioners—the defendants were at various times engaged in a peaceful protest activity, which is guaranteed to them by the Fourteenth Amendment of the U. S. Constitution. And we respectfully move that the Court grant a non-suit.

Attorney Barker: May it please the Court, the national corporation came in and answered. By calling the defen-

dant, W. W. Law, to the stand I believe without doubt that we established that they are affiliated all the way down, that they are a part of this corporation, that they make reports to this corporation, that there was no disapproval by the national corporation of the acts of the local corporation, or the local agents, or the agents of the local corpor—local affiliation, I'm sorry. That W. W. Law, [fol. 454] as being president of the State association, was acting in a dual capacity, that of being president of the local association and that of being president of the State association, in calling for this action against the Tropical Market. I believe the rest of it would be strictly facts to be carried over to the jury of whether it has been tied in closely enough and whether the acts of the parties thereto were sufficient to set forth the allegations as we have in our petition.

Attorney Mayfield: If Your Honor pleases, I'd like to readdress myself to the Court.

The Court: I don't want to hear you at this time. I don't want to hear you at this time.

Attorney Mayfield: Oh, yes, Your Honor.

The Court: Just sit down for a while.

Note: (Pause while the Court examines the records in the case.)

The Court: As I recall the evidence, the only evidence of the corporation was of the New York corporation. The others were described as unincorporated, as being affiliated with the New York corporation. Now there was a recent act passed—I looked for it last night and couldn't find it—about suits against unincorporated organizations, other than our general statute. There was one passed I'm sure. [fol. 455] I haven't—do you recall whether it's codified, any counsel?

Attorney Hollowell: I think it's codified under the Title 22, if I'm not mistaken, Your Honor, which permits suing of unincorporated associations without—by merely bringing the action or serving the officers thereof and in the

association name. This is my recollection of how it reads in substance.

The Court: I kept looking under churches, unincorporated, corporations, and affiliates, and didn't find anything. I did not look under the corporation act.

(Pause.)

The Court: Now conceding for the sake of argument that the national association is incorporated—

Attorney Hollowell: I think you were looking for 3-118, Your Honor, under Actions; the 1959 act.

The Court: Under Actions?

Attorney Hollowell: Yes, sir. 3-118, I believe. That's probably—you mean suits brought against unincorporated associations?

The Court: Yes, sir. Well, get me Title three.

Attorney Hollowell: That reads: "Actions or suits may be brought—may be maintained against and in the name of any unincorporated organization or association for any [fol. 456] cause of action or upon which the plaintiff therein may maintain such an action against the members of such organization or association." Is that the one you had reference to?

The Court: Yes, that's the one I wanted.

Attorney Hollowell: That's on page 94 of Title three.

(Pause.)

The Court: —This was the point I'm about to raise: Conceding that a suit can be brought against an unincorporated society or organization under this Act, and that unincorporated association is affiliated with a national association which is incorporated and which is a foreign corporation of the State of Georiga, would the fact of affiliation alone; that is, they have the same general objects and purposes, to wit, the advancement of the colored race or

the Negro race, would the national association then be bound by the acts of the affiliated association, they not being incorporated, and, so far as the evidence is concerned; there being no evidence to the effect that any member was the agent of the national corporation. In other words, they were just affiliated.

Attorney Dickey: We alleged, Your Honor, that W. W. Law was an agent and in evidence we produced a circular [fol. 457] distributed by W. W. Law—or his authorization, and distributed giving notice of this meeting. And our petition alleges that he was an agent, and acting pursuant to the authority as such agent called this meeting. And here's the circular showing NAACP, National Association for the Advancement of Colored People.

Attorney Mayfield: If Your Honor pleases, if I may call to the Court's attention, this circular does not under any pretenses show that this was under the auspices of the National Association for the Advancement of Colored People, Incorporated; and as I recall the face of the circular, Your Honor, I recall no recollection of the—there being any indication that Mr. Law or Reverend Jaudon were acting in a capacity as a representative of the National Association for the Advancement of Colored People, Incorporated, or the Georgia State Conference of the National Association for the Advancement of Colored People.

The Court: There was no evidence that the State Conference was incorporated and there was no evidence that the local society was incorporated.

Attorney Mayfield: That's right, Your Honor.

Attorney Barker: Evidence to the contrary, I believe, sir.

[fol. 458] The Court: Produced by Law on the witness stand.

Attorney Barker: Yes, sir.

Attorney Mayfield: Yes, sir.

The Court: If I recollect the testimony correctly, he testified that the National Association was incorporated.

Attorney Barker: Yes, sir.

The Court: And that they worked under the National Association, that is, they made reports to them and—

Attorney Barker: Attended workshops under the direction of the officers and directors of the National Association.

The Court: That's right; he testified to that, attending workshops; that is, methods and means of securing—

Attorney Barker: Or, in effect, counseling.

The Court: And that after this situation had developed it was reported—when the suit was filed, it was reported to the National Association. Now—

Attorney Mayfield: I respectfully submit, Your Honor, that the—

The Court: Well, just wait a minute now. Just give me time to look at this answer.

(Pause.)

[fol. 459] The Court: Mr. Reporter, the only testimony as I see, other than that circular, bearing on this issue would be that of W. W. Law. How long before you could get a transcript of that for me?

Reporter: About three or four hours for a transcript.

Attorney Hollowell: Your Honor, I think—I don't know. I'll have to ask counsel this, but I think it might be pretty generally stipulated, and—insofar as we remember the evidence, and we would stand to be corrected by counsel for the plaintiff if we were in error—if we are in error. I submit that that is the only testimony that has come into the record and was—

The Court: Well, you weren't here when Law testified.

Attorney Hollowell: I mean counsel here was, and this is the information that comes from them. I only rise now because of being chief counsel; and this is what they indicate to me, and I say counsel for the plaintiff could correct us if this is in error. Mr. Barker—if the Court would permit—do you have any recollection of there having been any other testimony?

The Court: Law testified, according to my notes, that the local is not incorporated, the State is not incorporated,

local branch a unit of National Association, annual convention, controlled by the annual convention and actions [fol. 460] of the Board of Directors, workshops, send representatives and go to workshops. The answer for the National Association denies Paragraph 2, which alleges the agency.

Attorney Dickey: If Your Honor please, the reason we believe the record would reflect a direct association with the defendant Law with the National Association is we followed—this was defendant Law's testimony taken. We didn't put it in evidence, but we followed this in asking him questions on the stand. "Did you attend a meeting of the National Association for the Advancement of Colored People at Saint Phillips Monumental Church on May 31st of 1962?" I think his answer will be yes, he did.

The Court: I'm certain his answer was yes; but that, as I understood it, was the local association.

Attorney Dickey: We alleged in our amended petition that there was a meeting of the National Association for the Advancement of Colored People, that the meeting was held pursuant to a circular—

The Court: The New York corporation? You see, we're dealing with legal entities here.

Attorney Barker: Sir, might I read this to you, this from our amended petition?

[fol. 461] The Court: Yes.

Attorney Barker: Paragraph 7. "On May 31st, 1962, at 8:00 p.m. at Saint Phillips Monumental Church on Park Avenue and Jefferson Street, where defendant Jaudon is pastor, there was a mass meeting of the National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People."

Attorney Gadsden: If Your Honor please, I think we—the Court's—attention to the fact that there hasn't been one bit of evidence educed here at this trial to show that W. W. Law or Reverend Jaudon acted under the auspices or direction or in concert with the New York office, that is,

the National Association for the Advancement of Colored People, Incorporated, and the only evidence that has been introduced here has been the circular, which is not conclusive in itself. There hasn't been one additional piece of evidence presented to this Court, and no agency has been established, sir.

(Pause.)

Attorney Gadsden: If I may, Your Honor, call to the Court's attention, read from the law of agency here, declaration by agent: "Declaration of a mere agent, standing alone, are not sufficient to prove agency, but declarations [fol. 462] of a general agent made, while in employment of defendant, are admissible to prove agency." But as we have here, Your Honor, a statement by attorney for petitioner that there was only a statement by W. W. Law, which stands alone without any corroboration, which is not sufficient within itself to prove the agency on behalf—on the part of the National Association for the Advancement of Colored People, Incorporated. With reference, Your Honor, to the petition, we respectfully submit that this is merely an allegation and not proof within itself without evidence to sustain it.

The Court: I'll get the reporter to play his testimony back.

Note: (At this point the testimony requested was reproduced for the Court. The jury was then called back into the courtroom and court was recessed for the day.)

[fol. 463] (Third day.)

Note: (The jury withdrew from the courtroom.)

Attorney Mayfield: If Your Honor please, I—

The Court: Just a minute, if you don't mind. They are verifying one of their amendments. As I understand, a pleading can be verified at any time.

(Pause.)

The Court: All right, Mr. Mayfield.

Attorney Mayfield: If Your Honor please, as suggested yesterday by the Court, we are tendering—or filing herewith the written motions for non-suit as to each and every defendant separately, sir.

The Court: All right.

(Pause.)

Attorney Barker: May it please the Court, the plaintiff has a motion when the Court would entertain one, sir.

(Pause.)

The Court: The Court has considered the matter of the motion for non-suit on all the grounds made, and as the Court has already allowed evidence to prove a conspiracy—conspiracy, of course, not being the gist of this action, but the matter of inducement, and conspiracy can be proven by direct or circumstantial evidence—the question of agency is [fol. 464] so closely tied with the question of conspiracy that in order to be consistent with its rulings, the Court will have to overrule the motion for non-suit. It's a very close point.

Attorney Mayfield: Would the Court indicate please whether or not the order of the Court relates to each and every defendant?

The Court: To each and every defendant.

Attorney Hollowell: If it please the Court, we would like to further for the record make a motion at this time for a directed verdict in favor of each of the named defendants in this case and on the grounds as they have been enumerated in the motion for non-suit. We would be prepared to argue that. We want the record to show that we are making such a motion, and rather than enumerate again those grounds, we want to have the record show that we are adopting the grounds as enumerated in the non-suit as the basis for the motion for a directed verdict in behalf of each of the defendants.

The Court: I don't need to hear from the other side. Having overruled the motion for non-suit, I certainly would be inconsistent if I directed the verdict.

Attorney Barker: The motion that I was going to ask you to entertain a moment ago, sir, is withdrawn because [fol. 465] there would be no necessity.

* * * * * * *

[fol. 480]

TESTIMONY OF W. W. LAW

Q. Now, Mr. Law, you know that the plaintiff in this action has alleged that this was some type of conspiracy which was engaged in between you and defendant Reverend Jaudon, the Savannah Branch of the NAACP, the Georgia State Conference, and the national organization itself. Now I would like for you to state for the Court and jury whether or not any such conspiracy existed between the organizations that I have mentioned?

A. There was no thought of conspiracy, none intended. We were engaging what is normally the kind of protest that we feel necessary to engage in all throughout the country.

Q. State whether or not any of the other organizations that I mentioned were aware or had any knowledge—

A. Had no knowledge, none.

* * * * * * *

[fol. 496] Q. At a later date did you have a meeting of your Executive Committee?

A. We did.

Q. They—did they approve and ratify the acts taken by you and Reverend Jaudon and the secretary at the meeting of the National Association for the Advancement of Colored People at Saint Phillips Monumental Church?

A. At that time they gave their approval to the action taken by the meeting.

Q. And did they give approval—was it in a formal meeting?

A. They gave approval, yes.

Q. In a formal meeting?

[fol. 497] Yes.

* * * * * * *

[fol. 499] Q. You went into the purpose of the NAACP a moment ago. To join the NAACP do you have to pay dues or a membership fund?

A. Yes, you pay a fee.

Q. What would be the fee to join the NAACP?

A. Well, you could join for two dollars, three fifty, five, ten.

Q. Now what would these figures represent?

A. Dollars.

Q. No. What would they represent—would they—do you retain the money?

A. A portion of it remains in the Branch; a portion goes to the national office.

Q. A portion goes to the National Association for the Advancement of Colored People, a New York corporation?

A. This is true.

Q. Would that also make me a member of the National Association for the Advancement of Colored People, a New York corporation?

[fol. 500] A. It would.

Q. Are the local members of the NAACP members of the National Association for the Advancement of Colored People, a New York corporation?

A. They are.

* * * * * * *

[fol. 591] Attorney Gadsden: We rest, may it please the Court.

Attorney Barker: The plaintiff closes and waives the opening argument with the reservation to make the closing argument.

Colloquy on Motion for Directed Verdict and Denial Thereof

Attorney Hollowell: If it please the Court, in advance of that, we want to renew our motion.

The Court: All right. The jury will retire.

Note: (The jury retired to the the jury room.)

Attorney Hollowell: If it please the Court, we would like to renew our motion for non-suit and, also, renew our motion for a directed verdict—

[fol. 592] The Court: Well, it's too late to make a motion for non-suit.

Attorney Hollowell: Yes, I agree with you; only for the directed verdict. We already have the motion for the non-suit as a matter of record. We move for a directed verdict on the grounds that the plaintiff has not carried the burden which is upon it to make a sufficient prima facie showing in order to establish that it would be—or he would be entitled to a judgment against the individual defendants, the Association, nor the corporate defendant. This is based upon the grounds, Your Honor: number one, that there has not been a conspiracy shown for the purpose of destroying the business of the plaintiff, which is an allegation which was made by the plaintiff in this particular case. There has been no such showing. There has been no showing that there was any conspiracy in which the National Association, a New York corporation, was a part of. There has been no showing that there was an agency relationship between the National Association and any of the associations, unincorporated associations, or the named defendants. There has been no showing that any of the defendants were engaged in any conduct which would give rise to a conspiracy, nor has there been establishment in [fol. 593] an amount that would be necessary to show that any of the defendants at any time were engaged in conduct which was illegal and which gave rise to damage to the particular plaintiff. As a matter of fact, I would submit that the conduct of the persons who have testified as to membership in the organization and those who are the individual defendants would indicate that their conduct was at all times proper, that they did not at any time do anything themselves which would cause them to be legally responsible for any damage which might have arisen on

the part of the plaintiff here. And for these reasons, Your Honor, we submit that a verdict ought to be directed in favor of each of the defendants, the corporate defendant, the two associations which are unincorporated, and the named defendants, and we ask the Court to so rule.

The Court: The motion is overruled.

* * * * * * * *

[fol. 597]

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

CHARGE OF THE COURT

[fol. 598] I am going to yield to the temptation to begin this charge with the old legal cliche that has probably been worn threadbare, but I believe applicable in this case, to wit: the purpose of all legal investigation is to ascertain the truth. It is your duty in this case, as far as you can determine from the evidence as produced on the witness stand and from the applicable law as will be given you in charge by the Court, to the best of your ability to ascertain the truth between the conflicting contentions of the parties and render a verdict accordingly.

The plaintiff's petition consists of some twenty-three paragraphs, and he has amended some of them. The first amendment filed by the plaintiff was filed on the first day of February, 1963, and is backed in blue paper. The original petition is backed in white paper. This amendment, briefly, is an expansion and amplification of certain paragraphs of the original petition. Then again the plaintiff, at the beginning of the trial on November 12th, filed an additional amendment, which dealt with one subject only, and amended his petition, as heretofore amended, in regard to paragraph nineteen. That is the paragraph setting out damages. The Court, in allowing this amendment,—and you can see by the order on the back of it—struck that portion of the amendment which claimed salary for Mr. Overstreet and a salary for Mrs. Overstreet, as the Court did not consider those proper elements of damage.

And then again this morning the plaintiff filed another amendment, which is really insignificant in that it verified

—and you can verify a former pleading by swearing to [fol. 599] it. The plaintiff's petition is sworn to. The answer is not sworn to, but that makes no difference. If the plaintiff had objected to an unsworn answer he should have raised the objection before trial; and even if he had raised the objection, it would have been an amendable defect and could have been cured by adding the necessary affidavits.

The Court is going to attempt to summarize the petition. Ordinarily I read the petition paragraph by paragraph and each corresponding paragraph of the answer, but in the interest of time I am going to summarize the petition. The petition is brought against five parties defendant, and they are set out in paragraph two. They are the National Association for the Advancement of Colored People, a New York Corporation doing business in Georgia; they are the Georgia Chapter of the National Association for the Advancement of Colored People—which turns out by the evidence to be not an incorporated organization; and the Savannah Branch, National Association for the Advancement of Colored People, being an affiliate of the National Association for the Advancement of Colored People, a New York Corporation doing business in Georgia, said defendants having a place of business in Chatham County, Georgia; and W. W. Law, individually and as President of the Georgia and Savannah affiliates of the defendant corporations, and who is agent in Chatham County, Georgia, for the defendant corporations; and Rev. F. D. Jaudon, individually and as Vice-President of the Georgia and Savannah affiliates of the defendant corporations, and who is an agent in Chatham County, Georgia. The suit alleges that the defendants, the individual defendants—that is, the two persons, Law and Jaudon, are residents of Chatham County, Georgia.

[fol. 600] Now the defendants, as listed, all five of them —and they are in these light blue backs—filed separate but identical defenses. At the back of the answer you will find what is called demurrers; you pay no attention to those because they raise issues of law and the Court has already

ruled on those and they are not before you. But each defendant categorically denies the second paragraph; denies at least the agency alleged therein.

Then after alleging the defendants are subject to the jurisdiction of the Court, they set up that this is a class action. A class action is simply an action where one of a certain organization or a class or a few are sued rather than all the members of the class. And they set up that in this law suit that the members of this class have acted in concert with the defendants in the activities hereinafter described and have been acting in a conspiracy and under the direction of the defendants, and particularly under the direction of the individual defendant W. W. Law. That—I believe I will get one of the answers—paragraph is denied.

Then the petition states that it is brought for injunctive relief and for damages. Then it proceeds to outline them —and a petition is an outline—of the facts concerning which you have had evidence produced before you. That a fourteen year old boy was employed by the plaintiff; that he was discharged for allegedly stealing; and that he came back to the plaintiff with a policeman to the store, and afterwards a warrant was sworn out; that a mass meeting was held on May 31st. The day of the alleged assault upon the boy and the alleged discharge was May 30th. That on May 31st a mass meeting was held in Jaudon's Church, and at this mass meeting it was decided by the [fol. 601] group to put on a selective buying campaign to begin the following day, and that pickets were called for to assemble at the plaintiff's place of business; that the purpose of the pickets was to stop customers and prospective customers of the plaintiff's who were on the way to the plaintiff's store to trade and turn them back and keep them from trading or giving the plaintiff the benefit of their patronage; and that this picketing was brought about by the conspiracy heretofore alleged between the defendants; and that the picketing intimidated and influenced the customers and prospective customers of the plaintiff so that they would not trade; and that in this way, through

the atmosphere of intimidation, coercion, that the plaintiff's business was lessened and destroyed. They allege that Law, as the leader of the pickets, was instrumental in placing the pickets adjacent to the business and advising them at what hours to picket and the method of approach to be taken in talking to plaintiff's customers and prospective customers. They not only allege that customers were turned away but threats were made to prevent the plaintiff's employees from continuing in his employ. And it is alleged that the charges made against the plaintiff were false and spurious accusations and were not true; and that all of this caused the plaintiff's customers to be fearful of trading in plaintiff's store; and that as a result of this, plaintiff's business was lessened; there was no labor dispute between the plaintiff and any of the defendants; and it is alleged that the establishment of the picket line amounted to a boycott.

Now generally the answer of all the defendants denies this. Where they don't have the information as to what [fol. 602] took place they neither admit nor deny it but call for strict proof.

Now these roughly are the issues made by the pleadings. Now you will have the pleadings out with you in the jury room. You can read them, not as evidence, but to ascertain the contentions between the parties; that is, the issues. There are certain issues made by the pleadings in this case, and there may be collateral issues that arise in the evidence and from the conflicts in the evidence. The plaintiff alleges a conspiracy; the defendants deny it. The plaintiff alleges that the boy employee was not beaten; the defendants deny it in the pleadings and contend in the evidence that he was beaten, he was struck and assaulted. The plaintiff alleges that as a result of this conspiracy certain overt acts—or overt acts were commited by the conspirators and by those incited by the conspirators, and that these acts resulted in damage to the plaintiff.

There has a great deal been said in this case about the burden of proof. The burden of proof generally lies upon

the party asserting or affirming a fact, to the existence of whose case or defense such fact is essential. The burden of proof in this case lies upon the plaintiff to prove by the preponderance of evidence the allegations of his petition; that is, the conspiracy, the agency, the overt acts, and the damage, and that the conspiracy was carried out unlawfully, without legal excuse, or was carried out in an unlawful manner. Now the burden lies on the plaintiff to prove those things. The burden further lies on the plaintiff to prove the elements of damage for which he seeks recovery. The burden lies on the plaintiff throughout the case.

[fol. 603] Now this is a civil case, as distinguished from a criminal case. In all civil cases the preponderance of evidence is considered sufficient to produce mental conviction. By a preponderance of evidence is meant that superior weight of evidence upon the issues involved which, while not enough to wholly free the mind from a reasonable doubt, is yet sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other. In determining where the preponderance of evidence lies the jury may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity for knowing the facts to which they testify, the nature of the facts to which they testify, and the probability or improbability of their testimony their interest or want of interest—that is, in the outcome of the case—and also their personal credibility so far as the same may appear from the trial. The jury may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Under the law of Georgia the Court cannot tell you what he thinks the evidence proves or doesn't prove. He cannot tell you what weight you shall give to evidence or shall not give to evidence. He cannot tell you whom to believe and whom not to believe.

By credibility of witnesses is simply meant whether a witness is worthy of belief; are you going to accept his

testimony. If, upon consideration of the evidence in this case, you find there is conflict in the testimony between the witnesses or a conflict between the witness or witnesses, it is your duty to reconcile this conflict, if you can do so, without imputing perjury to any witness; and if you cannot [fol. 604] do so without imputing perjury to any witness, then it becomes your duty to believe the witness or witnesses you may think best entitled to belief. And you may consider their interest or want of interest in the result of the case, their bias or prejudice if any appears, and the reasonableness or unreasonableness of their statements that they may make, their familiarity with the facts that they testified about, the personal credibility of a witness so far as the same may legitimately appear upon the trial of the case, but the jury, as stated, are the last, sole and exclusive judges of what witness or witnesses they shall believe or disbelieve and what testimony they shall credit or discredit.

Ordinarily there are three ways of impeaching a witness. One of them, which is not applicable in this case—because there has been no evidence that any witness is unworthy of belief; that is, by another witness who swears that he knows the reputation of the witness for truth and veracity. There has been no evidence of that type, that a particular witness on either side is unworthy of belief. To impeach a witness is to show to the satisfaction of the jury that the witness is unworthy of belief. A witness may be impeached: first, by disproving the facts testified to by him. As this Court interprets that section of the Code, it simply means that you accept the evidence of another witness or other witnesses as more creditable. By proof of contradictory statements made previously by him as to matters relevant to the testimony and to the case. By evidence of his general bad character. That is not in this case at all. If it is sought to impeach a witness by proof of contradic- [fol. 605] tory statements previously made by him as to matters relevant to his testimony and to the case, the witness's attention shall be called to the time and place where

the statement was made. Whether such a witness is impeached by contradictory statements, of course, is for the jury. There has been no effort in this case to impeach witnesses by statements made out of Court, but there has been an effort upon the part of counsel for both sides on cross examination to shake the witness's testimony or impeach it by getting him to make contradictory statements from the stand or attempting to get him to make contradictory statements from the stand. You heard the evidence, the direct examination and cross examination of all the witnesses, and it's for you to determine whether any witness's testimony has been discredited in this manner so as to render it unworthy of belief. When a witness shall be successfully contradicted as to a material matter his credit as to other matters shall be for the jury, but if a witness shall swear willfully and knowingly false his testimony shall be disregarded entirely, unless corroborated by circumstances or other unimpeached evidence; whether the credibility of a witness has been shaken being a matter entirely for your determination.

Direct evidence is that which immediately points to the question in issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed. Of course, in this case you have had both types of evidence, direct and circumstantial evidence. In a civil case if the plaintiff is relying upon circumstantial evidence, before he would be authorized to recover or establish the [fol. 606] issue, the testimony must be such as to reasonably establish the theory relied upon and to preponderate to that theory rather than to any other reasonable hypothesis. If circumstantial evidence is relied upon and the facts proven should be consistent with either of two opposing theories they would not be regarding as proving either. The comparative weight of circumstantial evidence and direct evidence on any given issue is for the jury.

We have in this case, at least in one instance, what is termed as expert evidence. That was the testimony of the

accountant who testified. The law allows to be introduced in evidence books of a business or a concern that are kept in the regular course of business whether the entries made in those books are made by the party who performed the act or are made by a party who gets it, the information, from another party who performed the act about which the entry relates; provided, of course, the Judge finds that the book was made in the usual course of business. There is such evidence before you in the nature of a book which was testified to. You heard the testimony relating to that. It is like any other testimony; you can either accept it or reject it or give it such weight as you see fit. The law also allows a Certified Public Accountant or an Accountant to summarize facts shown by many books and records, provided the books and records are made available to the opposite party. There was evidence in this case as to what the summary of certain books showed.

Now the law also provides that where several people are charged with a tort—and tort means wrong—that the [fol. 607] plaintiff may sue one or all, and the plaintiff may recover against one or all or may recover against a certain number of the tort feasors and not against others. This suit was brought for a wrong, alleged wrong, and it is in the province of the jury, as judged by the evidence, to allow a recovery against all or against some of the defendants. You would not necessarily have to find in favor of—against all of the defendants and you would not necessarily have to find in favor of all of the defendants. You can find against some or in favor of some or you can find, of course, against the plaintiff; because a recovery can be had against one or more than one.

Now the plaintiff alleges in this case that there was a conspiracy. Now a conspiracy is defined in law as a combination between two or more persons to accomplish an illegal purpose or to accomplish a legal purpose by illegal means. The elements of conspiracy are the combining together of two or more persons for the purpose—that is the object—of doing something unlawful or oppressive or

immoral in itself or as means to an end. Where civil liability for conspiracy is sought to be imposed, the conspiracy itself furnishes no cause of action, but the gist of the action is the damage done as a result of the conspiracy, and not the conspiracy; it is the tort committed against the plaintiff and the damage thereby wrongfully inflicted; and all of the conspirators, whether they actually participate in the wrong or counsel or advise it, are held liable on the theory that any conspirator or one of the conspirators is the agent for the other conspirators. Now conspiracy of itself is difficult to prove and the law allows great latitude. You don't have to prove an express agreement in writing; you don't have to prove an express oral [fol. 608] agreement. A conspiracy may be shown by a tacit understanding between individuals. It may be shown by a common design to accomplish an object or a purpose, and by the fact that the individuals act in accordance with this common design. It can be shown by circumstantial and indirect evidence. And one of the points in this case is, was there a conspiracy—that's one of the issues—between these defendants. Did they meet and conspire? Did the scheme of what they were going to do evolve out of the meeting? Did they all participate in it? And did the conspiracy result in some act being done to carry out that common design, to carry out the purpose of the design; and the purpose of the design must be illegal or it must—if it is legal, it must be accomplished by illegal means. Now the defendants contend in this case that there was no conspiracy. You are to look to the evidence and determine that.

The National Association for the Advancement of Colored People, a New York Corporation, is a foreign corporation and it can only be represented in Georgia by agents, and the agents must conduct themselves in a manner that is compatible with the purposes of that organization. You have heard the evidence as to the organization. It is not an ordinary business organization, in that sense. It is an organization to cover certain activities, as explained on the

witness stand, activities for the advancement of colored people as they contend to protect them in their constitutional rights and in their rights as citizens. Now did the National Association for the Advancement of Colored People have an agent in Savannah? Who was that agent? Was [fol. 609] it W. W. Law? Was it the Savannah Branch of the National Association for the Advancement of Colored People, as an affiliate? Is the National Association responsible for what this affiliate does? Or is the Georgia Conference—I believe they call it—is it responsible for what the affiliate does? Are they so connected that one is responsible for the act of the other by reason of the agency; by reason of their concerted activities as expressed in this conspiracy? As the Court sees it, you can't get agency and conspiracy separated in this case. A corporation may be a member of a conspiracy if its officers and agents take part in it and it furthers the conspiracy. You look to the evidence and see if it preponderates as to these organizations. Was there an agency that bound the National Association for the Advancement of Colored People, a corporation; was there such an agency? Did they participate through their agents and members and people who had a right to bind them in this conspiracy? Was this conspiracy carried out by members of the local organization? Was what took place a result of their activities and the placing of the pickets at the various corners? I don't think—and I charge you—that the mere fact that there had been protests made before the meeting of the Association, there had been indignation expressed by a group of people, and certain action taken, would not prevent the Organizations or the parties from conspiring. They could have joined the movement and been just as guilty of a conspiracy as if they had initiated it. But did they do it? Those are the facts for you to determine. Now was the purpose of the conspiracy legal or illegal? Did these people have a right as a result of an individual altercation, of an altercation [fol. 610] between two individuals, however unjust it might have been or appeared to have been, did they have the right

to take concerted action against the individual who is alleged to have committed the abuse? You are to determine that from the evidence and from the further matters that will be given you in charge. It is a matter for your determination whether there was a conspiracy, whether the people engaged in it have bound the principals that are alleged to have been engaged in it, whether overt acts were done in the advancement of the conspiracy or incited by the pickets placed so that what was done could be traced as a result or the proximate cause of the picketing and of the conduct of the parties, and did this act or these acts result in damage to the plaintiff in the case. You are to determine that.

Now proximate cause may be defined as an act or an omission which immediately causes the injury. It is the efficient cause without which the injury would not have resulted. It is not necessarily the sole cause, but as a result of its action a chain of events is set in motion bringing about the evil result without the intervention of an independent active efficient cause. One of the defenses of the defendants in this case is that if they had pickets they were peaceful, their instructions were peaceful, they made only persuasive statements, and that they are not responsible for what other people did by reason of the fact that they happened to be there at the same time, or they happened to come along. I charge you that in this case you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organi-
[fol. 611] zation; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted. But if that was an entirely independent efficient cause that had nothing to do with the pickets, if you find that was true, of course the pickets nor the organizations who placed them there could be held responsible. So you have to determine. Proximate cause is always a question of fact for the jury.

Picketing can be more than free speech since it involves patrol of a particular locality and since the very presence of picket lines may induce actions of one kind or another quite irrespective of the nature of the ideas which are being disseminated. Publication in the newspaper or by distribution of circulars may convey the same information or make the same charges as do those patroling a picket line, but the very purpose of a picket line is to exert influence and it produces consequences different from the modes of ordinary communication. A judicial theory of peaceful picketing is a form of free speech which cannot be stretched to shield malevolent picketing for the purpose of aiding an unlawful boycott. A person or a combination of persons cannot employ a lawful act for spite and solely for the purpose of injuring another. Such malicious purpose renders the act unlawful. The right to peacefully picket cannot be interfered with by Courts unless the picketing is for an unlawful purpose. If it is for an unlawful purpose, it can and should be enjoined.

The law recognizes the intrinsic difficulty of proving a conspiracy. The allegations with reference to a conspiracy [fol. 612] are treated as matters of inducement leading up to a more particular description of the acts from which the conspiracy may be inferred. Less certainty is required in setting out matters of inducement than in setting out the gist of the action. The conspiracy may sometimes be inferred from the nature of the acts done, the relations of the parties, the interest of the alleged conspirators, and other circumstances. To show conspiracy it is not necessary to prove an express compact or agreement among the parties thereto. The essential element of the charge is the common design; it is sufficient that two or more persons in any manner, either positively or tacitly, come to a mutual understanding that will accomplish an unlawful design.

Every agreement between two or more persons to accomplish a criminal or unlawful object, or a lawful object by criminal or unlawful means, is an unlawful conspiracy, and any person whose rights are injured by acts done in

furtherance of such conspiracy has his action at law for redress in damages.

Conspiracy is the combination of two or more persons to do: (A) Something that is unlawful, oppressive, or immoral; or (B) Something that is not unlawful, oppressive, or immoral, by unlawful, oppressive, or immoral means; (C) Something that is unlawful, oppressive, or immoral, by unlawful, oppressive, or immoral means.

If you should find from the evidence—that is, the preponderance of the evidence—that those who conspired in having the picketing and boycott put in effect were not actual participants therein and not actually present and participating in the act, you can nevertheless find such [fol. 613] persons as conspirators responsible for any damage which you might find has been done.

A corporation may be a party to a combination or a conspiracy with other corporations or persons which aims at and accomplishes injury to other corporations or persons and may be held civilly liable for the resulting damage to the extent as a natural person.

A boycott is a combining of many persons to cause loss to one by coercing others against their will to withdraw or withhold their beneficial business intercourse from him by the use of such means as the infliction of physical injury on their persons or property—and there is no evidence in this case, I charge you, as to physical injury as to persons—or such intimidation as will put them in fear of such injury, through fear of incurring the displeasure, persecution, and vengeance of the combination. Now you have heard the evidence as to intimidation and coercion. Did the picketing create an atmosphere of fear? Did it intimidate or coerce people not to trade with the plaintiff? You determine that from the preponderance of the evidence.

An essential element of boycott is an intent to injure. So also intimidation and coercion are essential elements in a boycott. In the present acceptance of the term, violence is not an essential element. It is sufficient that the means are intended and are such as naturally tend to overcome

the will of others and to compel them to do that which they would not otherwise do; and the extent of this fear need not be object, but only such as to overcome their judgment, or induce them to do or not to do that which they would have done or left undone.

[fol. 614] A person's business is property in the pursuit of which he is entitled to protection from tortious interference by a third person, who, in interfering therewith, is not acting in the exercise of some right.

Now on the other hand, there is such a thing as peaceful picketing; there is such a thing as persuasion, peaceful persuasion. I charge you that peaceful picketing is a form of free speech which is protected by the fourteenth amendment to the Constitution of the United States. It is a means of conveying information on matters of concern to an aggrieved group and to the public in general and is protected by the due process clause of the fourteenth amendment of the Constitution of the United States. Therefore, if you find that the defendants were engaged in peaceful picketing for the purpose of conveying information to Negroes and to the public in general as to an alleged injustice perpetrated by the plaintiff upon a Negro employed by him and requesting that Negroes withhold their patronage from the plaintiff's place of business, then such conduct would be protected by the due process clause of the fourteenth amendment and it would be your duty to find in favor of the defendants.

I charge you further in this connection while the dissemination of information in the form of free speech is protected, it must be true information. The fourteenth amendment of the Constitution of the United States does not protect falsity. One of the issues in this case is did the beating of the boy occur as contended by the defendants; did it take place or was it just a figment of imagination. If it didn't take place, then the representation that it did [fol. 615] take place would be false. Now if the people honestly believed it took place, you could consider that

in mitigation of their act. If one acts upon information he believes to be honest and true, his liability would be quite different from where he acts upon information he knows to be false. Were these pickets set out for the purpose of protecting Negroes, for bringing to light mistreatment of Negroes? Was it false, knowingly false, or was it believed to be true by the Negroes? You can take all those matters into consideration. Did they have a right to do it? There was an altercation between two individuals. Did the Negro people as a group—there's only one altercation shown by the evidence—did the Negro people as a group have a right to take this up and were they justified in so doing? That's a question of fact for you to determine.

I charge you that where the object of picketing is to enable those responsible for the welfare of others to fulfill their duties, then such picketing is privileged.

If you find that the defendants were acting in behalf and at the request of an employee of the plaintiff who had suffered an injustice by the plaintiff and that such action took the form of peaceful picketing, it would be privileged and it would be your duty to find in favor of the defendants.

I charge you that questions concerning the exercise of freedom of expressions are not resolved by mere reference to the fact that private property is involved or that a business will lose profits.

If you find that the defendants were exercising their [fol. 616] right to freedom of speech by peaceful picketing and conveying information concerning plaintiff's alleged injustice to a Negro employee, then such action would be protected by the due process clause of the fourteenth amendment to the Constitution of the United States. Under these circumstances it would not matter that the plaintiff had a private property right involved or that the plaintiff's business might lose profits and it would be your duty to find in favor of the defendants.

I charge you that unless you find, from all of the credible evidence, that the defendants, pursuant to a conspiracy, illegally damaged the plaintiff generally, nominally or

specially, there could be no punitive damages to the plaintiff.

If the damages to the plaintiff are only the imaginary or possible results of tortious conduct, or if other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be made the basis of recovery against the wrongdoer.

Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injure plaintiff in his business and by illegal acts did in fact injure him.

There can be no recovery for conspiracy alone. In other words, you can conspire but if you don't do something to carry out the conspiracy why no harm is done anybody.

Now this brings us, I believe, to the question of damages. Damages are given as compensation for injury done, and generally this is the measure where the injury is capable [fol. 176] —is of a character capable of being estimated in money. In other words, in awarding damages you seek to compensate for a loss that has been established; that is, in a case of this kind. I have already charged this section: If damages are only the imaginary possible result of a tortious act, or other and contingent circumstances preponderate largely in causing the injurious effect, such damages are too remote to be the basis of recovery.

Direct damages are those—are such as follow immediately upon the act done. Consequential damages are such as are necessary in connected effect of the tortious act, though to some extent depending upon other circumstances.

In this case the defendants contend, at least in part, that the loss of profits alleged to be suffered and to have been proven were not altogether due to any tortious act, but were due to competition across the street by another market. You can consider all of those things in determining whether there are damages. Did the other market—was it solely the cause, or did this damage follow the tortious act. Even

though there may have been other contingent matters affecting it, but was the real cause of it the alleged tortious conduct and was that conduct proven by the preponderance of the evidence.

In every tort there may be aggravating circumstances, either in act or in intent, and in that event the jury may give additional damages either to deter the wrongdoer from repeating the trespass or as compensation for wounded feelings of the plaintiff. I charge you that exemplary or punitive damages are damages on an increased scale awarded to the plaintiff over and above what will com- [fol. 618] pensate him for his property loss, and where the wrong done to him was aggravated by circumstances of violence, oppression, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of feelings, shame, degradation, or other aggravations of the original wrong, or to punish the defendant for his evil behavior or to make an example of him, for which reason they are called vindictive damages or smart money.

Now I charge you that one has a right to do business, and that right is a property right; and if that right is interfered with he can recover damages.

The good will of an established business has a value, and if the good will is destroyed by a tortious act the plaintiff would be entitled to recover for that act.

In this case you have had evidence as to the loss of profits for two specific periods in comparison. Now whether the plaintiff would have continued to do business or whether he would have done business for the length of time he testifies that he would do business, of course, is to some extent speculative. Whether he would or would not is for your determination. Whether he would have lived that long is for your determination. You have seen it. There is some evidence perhaps—at least there is the view of the plaintiff as to his expectancy. Would he live out that time? Would he continue to do business there for that length of time even though he would lose money? The plaintiff is supposed to lessen his damages rather than increase them. You take

all these things into consideration. If there is, in your opin-
[fol. 619] ion, no probability that he would have continued to do that business for that length of time, why you would not award him damages for good will. If there is a real possibility that he would do it, well then you could consider the matter of good will. Now the amount, of course, would be fixed and determined by you.

Now I don't want to be—fall into the habit that Judge Scarlett said, that the State Court judges talk too much, as reported in the morning paper. I think I have essentially covered the liability and the damages in this case, and I am not going to burden you with expanding on what a boycott is and what a conspiracy is and all the various elements that might enter into it.

The first thing for you to do is to establish whether there was a conspiracy; who participated in the conspiracy; were they bound by their participation; did they have agents there that would bind them as to the conspiracy; what was done to carry out the conspiracy; and if what was done was done by the conspirators or by their organization, by members of the organization, or by others who were attracted there; was it all a result of the picket line being put out there as a part of the conspiracy; what overt acts were done and what damages resulted; was it a conspiracy for an illegal and unlawful purpose and carried out by unlawful and immoral means, or was it for an unlawful purpose. You determine that. Was there a right of the conspirators in this case to do what they did and for the purpose, or was it just done maliciously for the purpose of oppressing and injuring? You determine those facts by the preponderance of the evidence, and I repeat it: That means that weight of evidence, while not wholly free from a reasonable doubt, is [fol. 620] still sufficient to incline a reasonable and impartial mind to one side of the issue rather than the other. Did these acts proximately cause the injury of which the plaintiff complains, the injury and damage, or did certain other things come in and contribute to them? Do other improbable things—other things not flowing from this, other con-

tingencies; did they preponderate and cause it? In other words, are the damages consequential; do they naturally and normally follow though there might be some interruption from other things? Are they just too remote? Are they imaginative? You determine that from the preponderance of the evidence.

Now the prayers of the petition—and I did not summarize them at first—the prayers of the petition are first for a permanent injunction. I might say that the plaintiffs have already been enjoined, but that is temporary. It is for you to determine whether they—I mean the plaintiff has already gotten a temporary injunction against the defendants, that has been in force during the time that the litigation was pending. You determine from this evidence, and as given you in charge, are the plaintiffs entitled to a permanent injunction or are they not. And then the plaintiff prays for damages. Those are set out in the amendment filed at the beginning of the trial on the 12th; that is, compensatory damages for a period of one year and five months, I believe is the period alleged. Is he entitled to those damages? Do they result from wrongful acts committed as a result of the conspiracy and the conduct of the conspirators and others incited by them? Then is the plaintiff entitled to loss of good will in the community, the loss that he suffered by reason [fol. 621] of his business standing as a merchant and the operator of the market being hurt for any period of time, and if so how much? And then was any wrong, if any you find were committed, done with malice and with intention to hurt without any reasonable—reason or justification? There is no rule laid down for punitive damages. You can't measure them. They are left to the enlightened consciences of impartial jurors, enlightened by all the facts and circumstances of the case. These are the matters, as I see it, for your determination; and determine them from the evidence as from the witness stand, not from any prejudice or bias or fact that the case is between members of different races. Limit it to the evidence from the witness stand.

Now there being several defendants sued in this case, there may be a possibility of several verdicts. You can find against all of the defendants; you can find in favor of all of the defendants. You can find against some of the defendants and in favor of others. Now in telling you of the form of your verdict the Court is not intimating how you should find. There are a number of verdicts possible in this case: A verdict in favor of the plaintiff against all of the defendants; a verdict in favor of the plaintiff against some of the defendants; a verdict in favor of all of the defendants; or a verdict in favor of some of the defendants. You could combine three and four.

There are three things which your verdict must cover. First, whether or not a permanent injunction shall be granted; second, whether or not compensatory damages shall be given; and third, whether or not punitive damages shall be given. Now if you find, after considering the [fol. 622] evidence—and I am not indicating how you should find—if you should find that the plaintiff is entitled to recover against all of the defendants, after you have considered all of the evidence, the form of your verdict would be: We, the jury, find in favor of the plaintiff and against the defendants, using the plural form. Then you would have to go on and determine further whether the plaintiff is entitled to an injunction. If you find that the plaintiff is entitled to a permanent injunction: That the plaintiff is entitled to the grant of a permanent injunction. And if you find damages—and you can find for the injunction without the damages: We, the jury, find in favor of the plaintiff and against the defendants in the sum of blank dollars compensatory damages; and in the further sum of blank dollars as punitive damages. If you find in favor of the plaintiff and against some of the defendants, you would name those defendants and follow through as to whether or not the injunction should be granted and the amount of damages, compensatory or punitive. The form of your verdict in that case would be: We, the jury, find in favor of the plaintiff

and against the defendants, and you would name the particular defendants, and then you would specify the amount of damages, compensatory or puntive. I think that would be the equivalent of finding in favor of the particular defendants you didn't find against, but if you feel that you should go further and state it: We the jury, find in favor of the defendant or two or three or whatever they are. Then if your verdict is in favor of all of the defendants, you just simply: We, the jury, find in favor of the defendants and against the plaintiff. Of course, these forms are a. [fol. 623] little confusing. If you need further instruction on them, I will see if I can't agree with counsel as to some type of forms to submit to you. But whatever your verdict is, it should be signed and dated by your foreman.

Now you will have out with you all the evidence, all the pleadings, and I might state this: I am sorry to have taken so long. You can't disperse now. If you care to go to supper—and I am not suggesting that you do or you don't—notify the bailiff.

Mr. Dickey: May I approach the bench?

The Court: Yes.

(Conference between Court and counsel)

The Court: I may instruct the jury that all compensatory damages—and that would include damages for loss of profits, if you think the profits have been proven, if you reach that conclusion—and for damage to the good will, the loss of good will, those would be lumped together and included as compensatory damages; that is, if you find any. Then you would find, as I have charged you in this case, if proven, punitive damages separate.

Now your verdict, in whatever form it takes, I suggest you write it on the original petition, which is this white paper. There is plenty of room on both sides. You may retire and consider your verdict.

[fol. 624]

IN THE SUPREME COURT OF GEORGIA

Docket No. .....

Chatham Superior Court

Writ of Error From the Superior Court of Chatham County, Georgia

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, GEORGIA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: SAVANNAH BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE: REVEREND F. W. JAUDON and W. W. LAW, Plaintiffs-in-Error,

vs.

HALDRED OVERSTREET, Defendant-in-Error.

EXCERPTS FROM BILL OF EXCEPTIONS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Georgia:

Be It Remembered, that on the 12th day of November, 1963, at the regular September Term, 1963, of the Superior Court of Chatham County, Georgia, before Honorable Edwin A. McWhorter, presiding, there came on to be tried the case of Haldred Overstreet, Plaintiff, vs. National Association for the Advancement of Colored People: Georgia State Conference of Branches, National Association for the Advancement of Colored People; Savannah Branch, National Association for the Advancement of Colored People; Reverend F. D. Jaudon and W. W. Law, Defendants, same being Case No. 2978 in said court, and same being an action for an injunction and an action for damages for injury to plaintiff's business interests.

Be It Further Remembered, that the trial of said case proceeded, a jury was selected, evidence was introduced by plaintiff and defendants, and after argument of counsel and the charge of the court in said case, the jury returned a verdict finding in favor of the plaintiff by granting a permanent injunction against the defendants and by finding in favor of the plaintiff in the sum of Eighty-five Thousand, Seven Hundred Ninety-Three and 05/100 ($85,793.05) dollars, on which verdict judgment was rendered on the 18th [fol. 625] day of November, 1963.

Be It Further Remembered, that, within the time provided by law, and on the 21st day of November, 1963, defendants filed their motion for new trial in said case, which motion was assigned by order of the court for hearing on January 23, 1964. Hearing on said motion was thereafter regularly continued to April 20, 1964, when said motion was heard and taken under advisement by the Court.

Be It Further Remembered, that on April 17, 1964, defendants tendered an amendment to their motion for new trial, and tendered a brief of evidence and a copy of the charge of the court, all of which were duly approved by the court, and were ordered filed with the Court as a part of the record in said case on said date, and were held by the court for use in considering the said motion. Said motion for new trial, as amended, was considered by the court, and on October 9, 1964, the Honorable Edwin A. McWhorter, Judge of said court, passed an order overruling said motion for new trial, as amended, and denying defendants a new trial in said case. Said case thus illegally terminated.

Defendants make the following assignments of error, to-wit:

1. To the order of the Court dated June 20, 1963, overruling the general demurrer, special demurrers and the motion to dismiss, defendants then and there excepted, now except and assign error thereon as being contrary to law and say that the court erred in entering said order.

2. To the order of the court overruling defendants' oral motion for non-suit submitted at the close of plaintiffs' evidence as to defendants, National Association for the Advancement of Colored People, Inc., The Georgia State Conference of Branches, National Association for the Advancement of Colored People and the Savannah Branch of the National Association for the Advancement of Colored People, defendants then and there excepted, now except [fol. 626] and assign error thereon as being contrary to law and say that the court erred in entering said order, on the grounds that there had been no evidence introduced by the plaintiff which in the exercise of sound discretion by the Court justified submission of the case to the jury on the questions of fact.

3. To the order of the court dated November 14, 1963 overruling defendant, National Association for the Advancement of Colored People's motion for non-suit, said defendant then and there excepted, now excepts and assigns error thereon as being contrary to law and say that the court erred in entering said order, on the ground that there was not evidence elicited reasonably justifying the court retaining this defendant as a party to the case.

4. To the judgment of the court dated November 18, 1963, making the verdict of the jury the judgment of the court, defendants then and there excepted, now except and assign error thereon as being contrary to law and contrary to the evidence and say that the court erred in entering said judgment.

5. To the judgment of the trial court overruling their motion for new trial, as amended, the defendants then and there excepted, now except and assign error thereon as being contrary to law on each and all of the grounds of said motion for new trial, as amended, and say that the court erred in overruling said motion for new trial, as amended, on each and all of the grounds therein stated.

6. To that portion of the trial judge's charge to the jury which reads, "As the court sees it, you can't get agency and conspiracy separated in this case," (Charge—p. 12) the defendants excepted, now except and assign error thereon as being contrary to the evidence and contrary to law. Said statement was erroneous and not sound as an abstract principle of law in that, a) there was no definition given as to [fol. 627] "agency;" b) there was no clear, concise and legally correct definition of "conspiracy" given by the trial judge as a part of his charge which relates to the subject case; c) agency and conspiracy are not synonymous; thus, the said statement was also vague, indefinite and misleading to the jury and was therefore prejudicial to the plaintiffs interest in the case.

* * * * * * *

[fol. 628] The defendants, National Association for the Advancement of Colored People; The Georgia State Conference of Branches, National Association for the Advancement of Colored People; the Savannah Branch, National Association for the Advancement of Colored People, W. W. Law and Rev. F. D. Jaudon, name themselves as plaintiffs-in-error and name Haldred Overstreet as defendant-in-error herein.

And now, within the time provided by law, come plaintiffs in error, and assigning error on the judgment and ruling herein complained of as being contrary to law, and tender this their Bill of Exceptions to His Honor Edwin A. McWhorter, Judge of the Superior Court of Chatham County, Georgia, and pray that the same be certified to as provided by law, and be transmitted to the Supreme Court of Georgia, in order that the alleged errors may be considered and corrected by said Supreme Court of Georgia.

Plaintiffs-in-error show that the Supreme Court of Georgia has jurisdiction of this case for the reason that it involves the construction of the Constitution of the United States and that it involves a matter of equity, and is therefore a type of action of which the Supreme Court of Georgia and not the Court of Appeals of Georgia has juris-

diction as provided in Article 6, Section 2, paragraph 4 of the Constitution of the State of Georgia.

Robert L. Carter, 20 W. 40th Street, New York, New York;
E. H. Gadsden, B. Clarence Mayfield, 458½ W. Broad St., Savannah, Georgia;
Donald L. Hollowell, 859½ Hunter St., NW, Atlanta, Ga. 30314;
Attorneys for Plaintiffs-in-Error.

[fol. 629]

IN THE SUPREME COURT OF GEORGIA

22814

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE et al.,

v.

OVERSTREET.

OPINION—April 20, 1965

1. (a). Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others. A person's business is property in the pursuit of which he is entitled to protection from tortious interference by a third person, who, in interfering therewith, is not acting in the exercise of some right.

(b). Plaintiff's petition alleging that he was operating a lawful business in a lawful manner and had not infringed upon the rights of the defendants, and that the defendants formed a conspiracy to damage and destroy his business as punishment of him for allegedly beating a fourteen year old negro employee, by picketing his store, and did pursuant to the unlawful conspiracy organize and conduct mass picketing of his store, where large numbers of pickets

gathered around the premises, obstructed and interfered with the use of the public sidewalks and streets and en- [fol. 630] trance to plaintiff's store, harassed, intimidated and threatened customers who attempted to enter the store, and encouraged and induced the public to boycott his business and his employees to leave his employ, all of which was a part of the unlawful, wilful and malicious conspiracy to damage his business and to force him out of business, which did injure and damage his business, stated a cause of action for injunction and damages.

(c). Peaceful picketing for a lawful purpose is protected under the free speech provisions of the Constitutions of the United States and of Georgia, but mass picketing by use of force, violence, and intimidation, harassment and other like activities is not peaceful picketing such as enjoys constitutional protection, nor does the protection extend to malevolent picketing for the sole purpose of punishing one who is accused of committing an assault and battery upon an employee, nor to picketing by the use of force, intimidation, violence or threats thereof to prevent or attempt to prevent any employee from continuing in the employ of his employer.

[fol. 631] 2. The court did not err in overruling the special demurrers for reasons set out in the opinion.

3. (a). As to the general grounds of the motion for new trial, the evidence amply supported the allegations that the picketing was not peaceful and was for an unlawful purpose.

(b). The evidence was sufficient to authorize the jury to find that an unlawful conspiracy to injure and damage plaintiff's property was formed by the defendants, Law, Jaudon, and other members of the Savannah Chapter of the N.A.A.C.P. acting as agents of the N.A.A.C.P. New York corporation and within the scope of their agency and that the conspiracy was carried out resulting in injury and damage to the plaintiff's property.

(c). There is no evidence to support the finding that the defendant, the Georgia State Conference of Branches of the N.A.A.C.P., participated in the conspiracy to picket and injure plaintiff's property or was in any way responsible for any damage done.

4. (a). The evidence amply supports the jury's award of compensatory damages in the amount of $35,793.05.
[fol. 632] (b). The evidence of wilful, deliberate, wrongful and unlawful picketing of plaintiff's business causing great injury and damage to his property, was sufficient to authorize the jury to award punitive damages, *Code* § 105-2002; and this court cannot say that the amount awarded was excessive, as punitive damages are fixed by the enlightened conscience of an impartial jury, and, the jury's verdict will not be disturbed by this court as the amount awarded would not justify an inference of "gross mistake or undue bias." *Code*, § 105-2015.

5. For reasons set out in Division 5. the court did not err in overruling the twenty-five special grounds of the Motion for New Trial.

ARGUED JANUARY 12, 1965—DECIDED APRIL 20, 1965—
REHEARING DENIED MAY 7, 1965.

Injunction, etc. Chatham Superior Court. Before Judge McWhorter.

[fol. 633] The plaintiff, Haldred Overstreet, brought his petition, as amended, in the Superior Court of Chatham County against the National Association for the Advancement of Colored People, hereafter designated N.A.A.C.P., a New York corporation doing business in Georgia, the Georgia State Conference of Branches of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P., the Savannah Branch of the N.A.A.C.P., an affiliate of the New York corporation of the N.A.A.C.P.; W. W. Law, individually and as President of the Georgia and Savannah affiliate of the N.A.A.C.P. corporation of New York, and

F. D. Jaudon, vice-president of the Savannah and Georgia affiliates of the New York corporation of the N.A.A.C.P., and as representatives of the classes composing all members of the N.A.A.C.P., alleging a conspiracy among said defendants and all those represented by them to destroy plaintiff's business, the operation of a retail grocery store in Savannah, by picketing the store premises and inducing others to refrain from patronizing the establishment. The petition prayed for a temporary and permanent injunction and for compensatory and punitive damages. The defendants filed general and special demurrers to the petition as amended, and a motion to dismiss, which, with the ex- [fol. 634] ception of two special demurrers, were overruled. At the close of plaintiff's evidence, motions for nonsuit were made as to the defendants, the N.A.A.C.P., incorporated, the Georgia State Conference of Branches of the N.A.A.C.P., and the Savannah Branch of the N.A.A.C.P., which motions were denied. The jury awarded the plaintiff compensatory damages in the amount of $35,793.05 and punitive damages of $50,000, a total of $85,793.05 and found for a permanent injunction. The exceptions are to the judgment of the trial court overruling the special and general demurrers and the motion to dismiss the petition, denying the motions for nonsuit, and the overruling of the defendants' motions for new trial on the general and special grounds.

Maria L. Marcus, Ann G. Feldman, Robert L. Carter, E. H. Gadsden, B. Clarence Mayfield, Donald L. Hollowell, for plaintiffs in error.

Dickey, Futrell & Barker, Robert E. Barker, Grady Lee Dickey, contra.

[fol. 635] Mobley, Justice. 1. (a) All the defendants were represented by the same attorneys and the defensive pleadings were in material respects the same. The rulings made here apply to each and all, as did the judgments of the trial court.

In brief, the petition as amended alleged that plaintiff owned and operated a retail grocery store at a named location in Savannah and had for 16 years, and had created good will and good faith in the course of his business with the public; that on May 30, 1962, he had in his employ a 14 year old Negro boy, who, one of his clerks advised him, had stolen some grocery items; that he admonished the boy and discharged him, and within about two hours, the boy and a police officer returned to the store and the boy accused him of beating him; that the boy's aunt on the same day swore out a warrant against him for assault and battery, and he charged the boy with stealing. That on the next night, May 31, 1962, at a named church of which F. D. Jaudon was pastor, there was a mass meeting of the N.A.A.C.P. and the Savannah Branch of the N.A.A.C.P. called pursuant to circulars distributed to members at the direction of Law to protest the alleged "beating of a four-[fol. 636] teen (14) year old negro boy by the owner of the Tropical Fruit Market." Present were the defendants Law and Jaudon, the defendant, Law, appearing and acting as agent of the N.A.A.C.P., as its agent, employee and servant, within the scope of his agency, employment, and service, and in the furtherance of the business of the corporation and in a like capacity with the Savannah Branch and the Georgia State Conference of Branches of the N.A.A.C.P. At the meeting, the defendants unlawfully, wilfully, knowingly, and with malice and the intention of putting plaintiff out of business, organized what they termed a "Selective Buying" campaign to begin the next day at plaintiff's place of business; that pursuant to said plan defendants caused pickets to be placed adjacent to his place, who stopped customers and prospective customers on their way to his place of business, told them of the beating of the boy and urged them not to trade with plaintiff; that the picketing consisted of mass picketing in that numbers of pickets gathered around the premises of plaintiff, obstructing and interfering with the use of the public side-

walks and streets and entrance to plaintiff's business. That said mass picketing was a part of the conspiracy of defendants to intimidate customers from entering plaintiff's [fol. 637] store and to force, intimidate, and coerce him into going out of business. That the pickets are harassing and intimidating customers from going into plaintiff's store by creating an atmosphere of possible violence thereabout by having large numbers of pickets in and around plaintiff's premises, by stopping all customers and inciting and inflaming them against plaintiff and by telling them false and misleading statements as to plaintiff's conduct, all of which caused his customers to be fearful of trading with him; that defendants encouraged and induced the public to boycott plaintiff's business in order to accomplish their unlawful purpose of putting him out of business; that when the picketing began more than 2/3rds of his customers were negroes, and defendants knew this and they, the defendants, initiated and carried on the unlawful, wilful and malicious conspiracy with the intent and purpose to damage him in the pursuit of his lawful business; that defendant Law was the leader of the pickets, was instrumental in placing them, directed their method of operation and participated as a picket, all of which acts were performed as agent of the N.A.A.C.P., the Savannah Branch and the Georgia State Conference of Branches and within the scope of his agency; that all of the acts constituted a general [fol. 638] malicious scheme and conspiracy to force plaintiff out of business and to hinder him in engaging in a lawful business. It was also alleged that the pickets threatened physical harm to plaintiff's employees in an attempt to force them to quit his employ in violation of *Code Ann.* §54-801 (Ga. L. 1947, p. 620). It is alleged that as a result of said conspiracy he suffered described pecuniary loss of money in the operation of his business, that the good will which he enjoyed had been destroyed, damaging him in the amount of $40,000. He also asked $50,000 punitive damages.

The petition alleges an unlawful conspiracy of the defendants to destroy the lawful business of the plaintiff, which

resulted in loss of business and damages to his property. "Every agreement between two or more persons to accomplish a criminal or unlawful object, or a lawful object by criminal or unlawful means, is an unlawful conspiracy, and any person whose rights are injured by acts done in furtherance of such conspiracy has his action at law for redress in damages." *Brown & Allen* v. *Jacobs Pharmacy Co.*, 115 Ga. 429, 441 (41 SE 553, 57 LRA 547, 90 ASR 126); *Cook* v. *Robinson*, 216 Ga. 328 (1, 2) (116 SE2d [fol. 639] 742). "Malicious injury to the business of another will give a right of action to the injured party." *Southern R. Co.* v. *Chambers*, 126 Ga. 404 (1) (55 SE 37, 7 LRA (NS) 926); Original Ballet Russe, Ltd. v. Ballet Theater, Inc., 133 F2d 187; Shell Oil Co. Inc. v. State Tire & Oil Co., 126 F2d 971; Boston Casualty Co. v. Bath Iron Works Corp., 136 F2d 31. See also *DeFoor* v. *Stephens*, 133 Ga. 617 (1) (66 SE 786). "Where one maliciously and wrongfully, and with the intent to injure another person's business prevents others from dealing with him and his business is thereby injured, the person thus injured has a cause of action against the person thus causing the injury, for the loss and damage sustained." *American Oil Co.* v. *Towler*, 56 Ga. App. 866 (194 SE 223), citing *Brown & Allen* v. *Jacobs Pharmacy Co.*, supra.

In 9 ALR2d 228 in an exhaustive annotation dealing with "Liability of one who induces or causes third person not to enter into or continue a business relation with another," it is said at p. 232 " . . . it would seem that the principle is generally recognized that a person's business is property in the pursuit of which he is entitled to protection from tortious interferences by a third person who, in interfering therewith, is not acting in the exercise of some right, such [fol. 640] as the right to compete for business" citing cases from many States, the United States Supreme Court, and this court.

"Every individual has a natural right to pursue a lawful occupation and to conduct his business according to his own

plans and policies, where he does not offend the law or unlawfully infringe upon the rights of others." *Jones* v. *Van Winkle Gin &c. Works,* 131 Ga. 336, 337 (62 SE 236, 17 LRA (NS) 848, 127 ASR 235). The plaintiff's business was a lawful business, was being operated in a lawful manner, and was property in which he had the right to protection in the use and enjoyment thereof. He had not in the operation of that business infringed upon the rights of the defendants. If he, as defendants contend, committed an assault and battery upon an employee, that is a criminal act, the punishment for which rests with the courts and not with individuals. Otherwise, we have anarchy. The alleged conspiracy to destroy his property by means of mass picketing of his store, intimidation and harassing of customers and employees simply because they may have thought he had mistreated a negro employee was unlawful, *Jones* v. *Van Winkle Gin &c. Works,* supra, (1); *Pedigo* v. [fol. 641] *Celanese Corp.,* 205 Ga. 392, 397 (54 SE2d 252), and constituted a tort against plaintiff by the conspirators for which they would be liable in damages, upon proper proof of the allegations.

Where, as here, a cause of action for damages for tort against the defendants is set out, the allegations showing a conspiracy make any actionable deed by one of the conspirators chargeable to all. *Cook* v. *Robinson,* 216 Ga. 328 (4), supra, and cases cited therein. The liability is joint and several. *Smith* v. *Manning,* 155 Ga. 209 (2) (116 SE 813). A corporation may be a party to a conspiracy and may be held civilly liable for resulting damages to the same extent as a natural person. 16 Am. Jur. 2d 151, § 47. The allegations that the N.A.A.C.P. corporation acting through its agents, conspired with others to damage and destroy plaintiff's business and performed described acts and did damage his property, stated a cause of action against the corporation as well as the individuals and the organizations which they represented and for which they acted. The trial court properly overruled the general demurrer to the petition, as amended, as to all the defendants.

[fol. 642] (b) The motion to dismiss the petition on the ground that it failed to state a cause of action for the reason that the defendants have the right, protected by the Constitution of The United States, to engage in peaceful picketing and other forms of peaceful activity designed to persuade the public not to patronize a commercial establishment that practices racial discrimination, and that in engaging in these activities the defendants were exercising a right of freedom of speech and assembly guaranteed by the due process clause of the 14th Amendment to the United States Constitution, and the Constitution of Georgia is without merit.

First, there is no allegation that the plaintiff practiced racial discrimination, nor any facts alleged from which such conclusion could be drawn. On the other hand, the petition alleges that more than 2/3rds of plaintiff's customers were negroes. The sole reason alleged for the picketing was the alleged assault and battery upon the 14 year old negro boy who worked for the plaintiff. It is not alleged that plaintiff was charged with beating the boy because he was a negro. "The right to exercise freedom of speech by means of peaceful picketing carries with it [fol. 643] no right to use force, violence, intimidation, harassment or the like. *Robinson* v. *Bryant,* 181 Ga. 722 (184 SE 298); *Local Union No. 3871, United Steel Workers of America* v. *Fortner,* 202 Ga. 206 (5) (42 SE2d 734); *Burgess* v. *Georgia Fla. &c. Ala. R. Co.,* 148 Ga. 417 (96 SE 865); American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 206," *Pedigo* v. *Celanese Corp.,* 205 Ga. 392, 397, supra. The petition alleges the use of force, violence, intimidation, harassment and other like activities. Applicable here is the following from *Ellis* v. *Parks,* 212 Ga. 540, 542 (93 SE2d 708): "The judicial theory that peaceful picketing is a form of free speech, as announced in Carlson v. California, 310 U.S. 106 (60 Sup. Ct. 746, 84 L. Ed. 1104), which is protected by the Constitutions, both Federal and State (*Code Ann.* §§ 1-801, 2-115), can not be

stretched to shield malevolent picketing for the purpose of injuring the employer and aiding an unlawful strike. Both the Supreme Court of Georgia and the Supreme Court of the United States have held that a person can not employ lawful acts for spite and solely for the purpose of injuring another, and that such malicious purpose renders the acts unlawful. *Hornsby* v. *Smith,* 191 Ga. 491 (13 SE2d 20, 133 [fol. 644] ALR 684); American Bank &c. Co. v. Federal Reserve Bank, 256 U.S. 350 (41 Sup. Ct. 499, 65 L. ed. 983, 25 ALR 971)." See also *Fleming* v. *H. W. Ivey Const. Co., Inc.,* 215 Ga. 460, 462 (2) (111 SE2d 97); *Curry* v. *Construction & General Laborers Union Local No. 438,* 217 Ga. 512 (123 SE2d 653). Where, as alleged here, the sole purpose of the picketing of plaintiff's place of business was to injure and damage his business, as punishment of him for the alleged beating of a negro boy who worked for him, the picketing is unlawful and not protected under the free speech provisions of the Federal and State Constitutions.

The picketing alleged here was unlawful for the further reason that it was in violation of *Code Ann.* §§ 54-801, 54-805 (Ga. L. 1947, pp. 620, 621) which provide: "It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer, or from entering or leaving any place of employment of such employer." (§54-801). "It shall be [fol. 645] unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any employer from lawfully engaging or continuing to engage in any proper and lawful business activity, or from the proper, lawful or peaceable use or enjoyment of his property used or useful in the conduct of such business, or from acquiring materials or supplies for the purposes of such business, or from disposing of the

goods, wares or products of such business, or to prevent or attempt to prevent any carrier or other person from supplying or delivering materials or supplies to any such employer, or from receiving or accepting delivery on the premises of such business of the goods, wares or products of such business." (§54-805). "It is a penal offense in this State to attempt by threats, violence, intimidation, or other unlawful means to prevent any person from engaging in any lawful employment . . ." *Robinson* v. *Bryant,* 181 Ga. 722, 728, supra. See *Code* § 66-9906 (Ga. L. 1887, p. 107); *Woodard* v. *Collier,* 210 Ga. 239 (78 SE2d 526); *Powers* v. *Courson,* 213 Ga. 20 (96 SE2d 577). The trial court committed no error in overruling the motion to dismiss the petition.

[fol. 646] 2. The trial court did not err in overruling the special demurrers numbers 3, 4, and 5. Special demurrers 1 and 2 were sustained by the trial court. Special demurrer 3 complains that the petition does not allege facts showing that any of the defendants committed alleged unlawful acts of harassing and intimidating customers of plaintiff by creating an atmosphere of violence around his place of business. The petition alleges a conspiracy among the defendants and others, and that the defendant Law acting for the N.A.A.C.P., organized, directed and actually participated in the picketing, and that the pickets did harass and intimidate plaintiff's customers. The act of any conspirator would be the act of all engaged in the conspiracy, thus the allegation is sufficient. Special demurrer 4 complaining that the time and place the alleged acts of the pickets in threatening physical harm to plaintiff's employees occurred is not alleged is without merit, as the petition sets out the place, plaintiff's store, and the time—the period from May 31, 1962, when the picketing began to June 22, when it was stopped by injunction. Special demurrer 5 was met by amendment alleging facts called for by the demurrer.

[fol. 647] 3. Motion for new trial.

(a) General grounds. The evidence was amply sufficient to establish the allegations of the petition that the defendants Law and Jaudon and other members of the N.A.A.C.P. formed a conspiracy among themselves to injure and damage plaintiff's business and to seek to put him out of business by picketing his place of business as punishment of him for (as they claim) beating a 14 year old negro boy who worked for him. Law testified that he selected the pickets, placed them at designated points around plaintiff's store, and maintained them there until enjoined by the court and that he himself served on the picket line from time to time. Large numbers of people joined in the picketing, at times blocking the sidewalks and making it necessary for plaintiff's employees and customers to walk in the street and blocking their entrance or making it difficult to enter. There was also evidence of mass picketing of the plaintiff's place of business effected by surrounding the premises and sidewalks adjacent thereto with large numbers of people, so as to prevent persons from entering his store, by creating an atmosphere of violence around the premises by inciting, inflaming, and prejudicing cus-
[fol. 648] tomers all of which caused customers to be fearful of doing business with him. The plaintiff and his wife and employees were threatened with violence, called vile and vulgar names. Bricks and rocks were thrown through the windows and onto the roof. A pistol was shot from the vicinity of the picket line, the bullet passing over the head of a customer who lived directly back of the store. The employees were threatened with physical harm if they continued to work for plaintiff.

Counsel for defendant contend that the evidence did not show that the pickets placed by the N.A.A.C.P. committed the various acts outlined above. However, the evidence is undisputed that all was peace and quiet around plaintiff's place of business until the picketing began and it returned only after the defendants were enjoined from further

picketing of the place. The evidence was sufficient for the jury to conclude that as a result of the mass meeting of the N.A.A.C.P. the picketing began, that the picketing was led by pickets placed on the picket line by Law, that they were joined by large numbers of sympathizers or other members of the conspiracy, and that the presence of the pickets brought about mass picketing, threats, violence, the use of [fol. 649] vile, vulgar and indecent language toward plaintiff, his wife, employees and customers. The picketing was not peaceful, thus unlawful; and it was for an unlawful purpose—punishment of plaintiff for the alleged commission of a criminal offense, assault and battery.

[fol. 650] (b) In determining whether there was sufficient evidence to establish a cause of action as against the defendants, the Savannah Chapter of the N.A.A.C.P., the N.A.A.C.P. corporation of New York, and the Georgia Conference of Branches of the N.A.A.C.P., it must be determined whether there is evidence that the defendants Law or Jaudon were acting as agents of said defendants. The evidence shows that the defendant Law was president of both the Savannah Branch and of the Georgia State Conference of Branches of the N.A.A.C.P., a New York corporation. Acting in that capacity he, by means of the circulars, called a mass meeting of the N.A.A.C.P. and of the Savannah Chapter of the N.A.A.C.P., in which meeting he and Jaudon participated and led the group in reaching the conclusion that the N.A.A.C.P. would picket the plaintiff's place of business with the view of injuring and damaging his business by inducing customers and prospective customers to refrain from trading with him; and, pursuant thereto, Law selected pickets, placed them at various places around plaintiff's place of business, picketed himself, and generally directed the picketing. "The function of the N.A.A.C.P.," according to Law, "is to give aid and assist-[fol. 651] ance to people in the minority group, meaning the negro group in seeking their rights and protection under the Constitution." In furtherance of that plan the

N.A.A.C.P. corporation of New York acts and operates in Georgia through the Savannah Chapter and other chapters, which compose the defendant, Georgia State Conference of Branches of the N.A.A.C.P. The petition was served upon the N.A.A.C.P. corporation, the Savannah Branch, and the Georgia State Conference of Branches of the N.A.A.C.P. by serving Law, as their agent. No plea to the jurisdiction or traverse of service was filed by any defendant, but each submitted to the jurisdiction of the court by filing answers, not made subject to their general demurrer, which alleged that the plaintiff did not state a cause of action against the defendant.

The Savannah Branch used the corporate name, N.A.A.C.P., and held itself out as representing the national corporation. The national corporation gave orders and counsel to its local representatives at annual conventions; the locals were affiliated with the national organization, and under its corporate charter, were units thereof; one paying dues to the local N.A.A.C.P. also became a member of the [fol. 652] national N.A.A.C.P.; members of the local were members of the national N.A.A.C.P. and a portion of the dues went to the N.A.A.C.P. corporation. These facts evidence that the locals are within the framework of the national organization and are used in furtherance of the latter's business and interest. "The relation of principal and agent arises wherever one person, expressly or by implication, authorizes another to act for him, or subsequently ratifies the acts of another in his behalf." *Code* § 4-101. A contract or an express agency agreement is not necessary to establish the relation. *Hubert* v. *Harpe,* 181 Ga. 168, 169 (182 SE 167). "The fact of agency may be established by proof of circumstances, apparent relations, and the conduct of the parties . . ." *Cable Co.* v. *Walker,* 127 Ga. 65 (1) (56 SE 108), and "A claim of agency may be established by circumstantial evidence . . ." *Universalist Convention* v. *Guest,* 179 Ga. 168 (2) (175 SE 466) and cases cited.

The national corporation never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged [fol. 653] or proven against them.

If Law originally acted without authority and assumed to act for them without authority, they had the option to repudiate or ratify the act, but they were required to do one or the other. And where, as here, they never repudiated the act, they are deemed to have affirmed it. See Mechem, Outlines of Agency (3d Ed), p. 94, § 152; *Southern Motors of Savannah* v. *Krieger,* 86 Ga. App. 574 (71 SE2d 884); *Haney School Furn. Co.* v. *Hightower Bapt. Inst.,* 113 Ga. 289 (2) (38 SE 761); *Glisson* v. *Burkhalter,* 31 Ga. App. 365 (4) (120 SE 664).

We are of the opinion that the record supports the conclusion that Law acted as agent of the defendant's Savannah Chapter, and of the N.A.A.C.P. New York corporation, and within the scope of his authority in calling the mass meeting, holding the meeting, in concluding to picket plaintiff's store and in picketing it, causing injury and damage thereto.

[fol. 654] (c) We do not believe that the evidence is sufficient to render the defendant Georgia State Conference of Branches of the N.A.A.C.P. responsible for the acts of Law, Jaudon and other members of the Savannah Branch of the N.A.A.C.P. in picketing and damaging plaintiff's business. There is no evidence that that organization had anything to do with this matter. While Law was president of that defendant, there is no evidence that he purported to act for it in calling a mass meeting to deal with plaintiff or in carrying out the plan agreed upon to picket plaintiff's business, nor that any other member purported to be acting as agent or in behalf of that defendant. So far as the record shows, no branches of the Georgia State Conference of Branches of the N.A.A.C.P. other than the Savannah

Branch, participated in the conspiracy or authorized anyone to act for them, or ratified any acts of Law or anyone else who may have purported to act for them.

Thus we conclude that as to the Georgia State Conference of Branches of the N.A.A.C.P. the verdict was without evidence to support it, and that the court erred in not granting the motion for new trial as to this defendant. As to the defendants, Law, Jaudon, the Savannah Chapter of [fol. 655] the N.A.A.C.P. and the N.A.A.C.P. corporation, the general grounds of the motion for new trial are without merit.

4. Compensatory and punitive damages.

(a) The jury awarded the plaintiff compensatory damages of $35,793.05 and punitive damages of $50,000.

Plaintiff alleged and the evidence supported the allegations that his net income from his business for the twelve months preceding the picketing was $3,018.26 and he suffered a loss of $952.19 during the twelve months following the beginning of the picketing, or a net loss of $3,970.45, which was the result of defendants' picketing his place of business; that the loss would have been much greater but for his action in terminating the services of seven of his eight employees and his wife and himself increasing their work at the store from three or four hours per day to twelve to fourteen hours. Plaintiff testified that he planned to continue in business for ten to twelve years, and his age and condition would support the conclusion that he could do so. It is uniformly recognized that good will is a species of property and constitutes a valuable asset of the [fol. 656] business of which it is a part. 24 Am. Jur. 804, § 4. "Good will is an attribute of a business . . ." 24 Am. Jur. 807, § 10. "Good will is the favor which the management of a business wins from the public, and the probability that old customers will continue their patronage and resort to the old place." *Armstrong* v. *Atlantic Ice & Coal Corp.*, 141 Ga. 464, 466 (81 SE 212). The evidence shows

conclusively that the plaintiff's business enjoyed the good will of the negro community prior to the picketing by defendants, as two of every three of his customers were negroes, and that the picketing of his store by defendants destroyed the good will of the negroes, as they stopped trading with him. To wrongfully injure and damage the good will of plaintiff's business gives a cause of action in tort for the resulting damage. In determining the value of the good will and the amount of damage thereto, the actual loss of earnings, as the proximate result of the tort, may be considered in determining the amount of damages to the good will of plaintiff's business. Thus, the evidence as to loss of earnings present and future and other evidence of damage to the good will of plaintiff's business caused by the illegal picketing thereof would support a finding [fol. 657] that he suffered more than $40,000 in actual damages. The verdict of $35,793.05 as compensatory damages suffered by plaintiff was authorized by the evidence and was not excessive.

(b) This division has been re-written to include discussion of the complaints thereto made in the motion for rehearing. Punitive damages in the amount of $50,000 were awarded plaintiff by the jury. *Code* § 105-2002 provides: "In every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrongdoer from repeating the trespass or as compensation for the wounded feelings of the plaintiff." This court in the recent case of *Cook* v. *Robinson,* 216 Ga. 328, 332 (10), supra, held that allegations of the petition that the defendants damaged petitioner in a named amount by their wilful, deliberate, wrongful and unlawful deeds, acts, etc., committed pursuant to a conspiracy among them to unlawfully ruin and destroy plaintiff's business, stated a cause of action for punitive damages, citing *Code* § 105-2002 and *Walker* v. *Grand International Brotherhood &c. Engineers,* 186 Ga. 811 (199 SE 146). The allegations of plaintiff's

[fol. 658] petition were substantially the same and stated a cause of action for punitive damages, and the evidence was sufficient to support same as shown by a review of the evidence on the general grounds in Division 3 (a).

Plaintiffs in error complain for the first time in their motion for rehearing of the court's charge on punitive damages. While the amended motion for new trial contains twenty-five special grounds, it did not contain one complaining of the charge on punitive damages. Thus the question was not submitted to the trial court, was not passed upon by that court, is not excepted to in this court, and thus under the law of this State cannot be considered by this court. Under the Constitution of this State, Art. VI Sec. II, Par. IV, *Code* § 2-3704, this is a court alone for the trial and correction of errors of law from the superior courts and other named courts, and "The Supreme Court . . . shall not decide any question unless it is made by a specific assignment of error in the bill of exceptions . . ." *Code* § 6-1607 (Ga. L. 1892, p. 113); *Brown Transport Corp.* v. *Truck Drivers & Helpers Local Union No. 728,* 218 Ga. 581, 584 (129 SE2d 767) and cases cited. [fol. 659] Punitive damages are recoverable in this case under *Code* § 105-2002 either "to deter the wrongdoer from repeating the trespass, or as compensation for the wounded feelings of the plaintiff." The evidence would support the vedict on either theory. The plaintiff could not recover for both, nor does the record indicate that the jury awarded punitive damages on both.

It is a question for the jury when punitive damages shall be allowed as well as the amount of such damages. *Batson* v. *Higginbothem,* 7 Ga. App. 835, 839 (2) (68 SE 455); *Kolodkin* v. *Griffin,* 87 Ga. App. 725, 731 (5) (75 SE2d 197).

The measure of damages where punitive damages are recoverable is to be fixed by the enlightened conscience of an impartial jury. *Selman* v. *Barnett,* 4 Ga. App. 375 (2) (61 SE 501); *Head* v. *John Deere Plow Co.,* 71 Ga. App. 276, 279 (4) (30 SE2d 662).

"The question of damages being one for the jury, the court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias." *Code* § 105-2015. See also *Lang* v. *Hopkins,* 10 Ga. 37 (3); *Adkins* v. *Williams,* 23 Ga. 222 (2); *Thorpe* v. *Wray,* 68 Ga. 359 (3a); *Realty Bond & Mort. Co.* v. [fol. 660] *Harley,* 19 Ga. App. 186 (2) (91 SE 254); *Fields* v. *Jackson,* 102 Ga. App. 117 (1) (115 SE2d 877). This court cannot say that the amount awarded as punitive damages is excessive.

[fol. 661] 5. Special grounds for new trial. Special ground 1. While it was not relevant in this case whether the defendant Law, as President of the Savannah Chapter and the Georgia State Branches of the N.A.A.C.P., had picketed on other occasions without first talking to and trying to negotiate their differences with the party to be picketed, his answer that that was generally their method and the reason it was not followed here was that the neighborhood was already incensed and the action they endorsed was already in progress, rendered the admission of the evidence harmless.

Special ground 2. The court did not err in permitting the witness to testify over objection that she was pregnant when she was threatened by someone in the picket line, as the evidence showed that the picket line was established by the defendant Law, acting for the N.A.A.C.P. The fact that she was seven months pregnant and was threatened in that condition goes to the gravity of the picketing and would be material on the question of its unlawfulness.

[fol. 662] Special ground 3. It was not error to admit, over the objection that none of the defendants were present, testimony of the witness as to threats and other remarks the negroes standing on the corner and across the street made to her when she traded at the store, as Law admitted that he assisted in placing the pickets on the picket line, and the evidence shows that several of the remarks were made by the pickets and others assisting them in picketing.

Special ground 4. The admisison of the testimony objected to in special ground 4 was not error for any reason assigned.

Special grounds 5, 6, 7, and 8 objecting to testimony as to threats, acts of violence, cursing, use of vulgar language, and a pistol shot by those picketing the plaintiff's place of business, are without merit. As pointed out by the trial judge in overruling these grounds, it clearly appears from the evidence that the presence of the pickets incited acts of violence around the place and that if the presence of the pickets and what they told people brought about the situation of tenseness and lawlessness about plaintiff's place of business, the pickets and those responsible for [fol. 663] them would be liable, if the picketing was not justified or amounted to mass picketing. This evidence was admissible on the question of liability of defendants for the damage done to plaintiff's business and responsibility of the defendants therefor.

Special grounds 10, 11, 12, 17, 18, 19, 20, and 21. The rulings heretofore made on direct exceptions to the denial of nonsuits and on the general grounds dispose of adversely to the plaintiff in error special grounds 10 and 11, complaining of the trial court's refusal to grant a nonsuit, special ground 12 of failing to direct a verdict, and special grounds 17, 18, 19, 20, and 21 which complain that the verdict is contrary to law because it deprives defendants of their right to freedom of speech and of their property without due process of law in violation of the United States Constitution.

Special grounds 22, 23, and 24 complaining respectively of the charges "Before the plaintiff can recover, you must be satisfied that the preponderance of the credible evidence in this case showed that the defendants conspired to unlawfully injury (sic) plaintiff in his business and by illegal acts [fol. 664] did in fact injured (sic) him;" "Now I charge you that one has a right to do business, and that right is a prop-

erty right, and if that right is interfered with he can recover damages"; and, "But whatever your verdict is, it should be signed and dated by your foreman," are so obviously without merit they are overruled without discussion. Plaintiff in error did not argue them.

Special ground 14. It was not error to charge "as the court sees it, you can't get agency and conspiracy separated in this case," as the question was whether there was a conspiracy to violate plaintiff's rights by the N.A.A.C.P. defendants acting by and through their agents Law, Jaudon, and other members of the N.A.A.C.P.

Special ground 15. It was not error to charge the jury that "you can consider the effect of the picket. Did the pickets incite—were the fact that the pickets were there incite activity upon people who were not at all connected with the organization; and if that was incited by the pickets, by their mere presence, you could consider the pickets and the placing of the pickets as the proximate cause of what resulted." The court continued, "But if that was [fol. 665] an entirely independent efficient cause that had nothing to do with the pickets, if you find that was true, of course the pickets nor the organizations who placed them there could be responsible. So you have to determine. Proximate cause is always a question of fact for the jury." The court's charge taken as a whole made it clear that if the picketing incited others, who were not pickets, to do acts against the plaintiff's business that the picketers would be a contributing proximate cause of what resulted, but if these were entirely independent efficient causes that had nothing to do with the pickets, the pickets would not be responsible therefor.

In responses to the motion for rehearing, we wish to point out that a conspiracy to wrongfully, unlawfully, and maliciously injure and damage plaintiff's business and to put him out of business is charged against the defendants; that such conspiracy was formed at a mass meeting of the

N.A.A.C.P. called by the defendants Law and Jaudon, and that pursuant thereto picketing began the next day and continued until stopped by the court; and that there was violence, threats against plaintiff and his employees, bricks [fol. 666] and rocks thrown into and on top of the store, blocking of the sidewalks and entrance to his store, mass picketing, harassment and intimidation of customers and employees, coming from the mass of negroes picketing the place, some of whom were admittedly those representing the defendants and placed there by Law. "The law recognizes the intrinsic difficulty of proving a conspiracy . . . The conspiracy may sometimes be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances." *Woodruff* v. *Hughes,* 2 Ga. App. 361 (58 SE 551); *Horton* v. *Johnson,* 192 Ga. 338, 346 (15 SE2d 605). "A conspiracy or common intent may be shown to have existed between the parties by proof of acts and conduct, *Davis* v. *State,* 114 Ga. 104 (39 SE 906); *Odum* v. *State,* 183 Ga. 854 (190 SE 25); and it may be shown by circumstantial or direct evidence. *McElroy* v. *State,* 125 Ga. 240 (2) (54 SE 125)." *Huckaby* v. *Griffin Hosiery Mills,* 205 Ga. 88, 91 (52 SE2d 585). Applying those principles here, the evidence would authorize the jury to find that such violent and unlawful picketing was the proximate result of the conspiracy without specific proof that one or more of the pickets placed there by Law were the ones who threw the rock, or per- [fol. 667] formed other specific acts of violence, intimidation, etc.

The principles enumerated in Wright v. State of Georgia, 373 U.S. 284 (83 SE 1240, 10 LE2d 349); Terminiello v. Chicago, 337 U.S. 1 (69 SC 894, 93 LE 1131), rehearing den. 337 U.S. 934; Near v. Minnesota, 283 U.S. 697 (51 SC 625, 75 LE 1357); Cantwell v. Connecticut, 310 U.S. 296 (60 SC 900, 84 LE 1213), cases relied upon by defendants in their motion for rehearing on this ground are distinguishable on their facts. The principle is explicitly stated and applied in Wright v. Georgia, supra, where the Supreme

Court of the United States reversed this court, holding that the convictions of negro children playing in a park in Savannah, formerly used exclusively by whites, cannot be sustained on the ground that their presence there "was likely to cause a breach of the peace by others, since the possibility of disorder by others cannot justify exclusion of a person from a place where he had a constitutional right to be." There was disorder, violence, intimidation, etc., here—not the mere possibility of such; and furthermore, the pickets had no lawful or constitutional right to form a conspiracy to violate plaintiff's right to operate his business, where he was not infringing any of their rights, or to force him out of business as punishment for committing a mis- [fol. 668] demeanor upon one of his employees or prevent or attempt to prevent his employees from continuing in his employ by intimidation, force or violence, etc.

This case does not involve a controversy between the races. The relations of this white storekeeper and the negroes of this community were obviously friendly and cordial, for his business depended upon their friendship and good will. He had both, as evidenced by the fact that more than two-thirds of his customers were negroes. He had built this good will over a number of years which must have required his good will toward them. The single incident, whether caused by plaintiff firing the boy or whipping him—whichever is true—and the evidence as to what occurred is inconclusive, would not justify the conclusion that the boy's race had anything to do with it. There is no evidence that what happened occurred because he was a negro. It might as well have happened to a white boy. This is obviously not a case of peaceful picketing to protest racial discrimination.

Special ground 16. complains that the charge set out above in the ruling on special ground 15 that if the picketing [fol. 669] by the N.A.A.C.P. incited others to join in and commit acts against plaintiff's business, that the act of the pickets would be the proximate cause of the injury

deprived the Savannah Branch of the N.A.A.C.P. of freedom of association in violation of the 1st and 14th Amendments of the United States Constitution. The ground does not show that it violates defendant's rights of freedom of association, as contended.

Judgment reversed as to the defendant Georgia State Conference of Branches of the N.A.A.C,P. Judgment affirmed as to all other defendants. All the Justices concur.

[fol. 670]
22814

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—April 20, 1965

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

National Advancement for the Advancement of Colored People et al. v. Haldred Overstreet.

This case came before this court upon a writ of error from the Superior Court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed for the reasons stated in the opinion as to the defendant, the Georgia State Conference of Branches of the N.A.A.C.P. Judgment affirmed as to all other defendants. All the Justices concur.

Bill of costs, $15.00.

[fol. 671]

IN THE SUPREME COURT OF GEORGIA

[Title omitted]

EXCERPTS FROM MOTION FOR REHEARING

Come now, the plaintiffs-in-error in the above-captioned case, and within the time provided by law, file this their motion for rehearing and for grounds state:

* * * * * * *

[fol. 672] 4.

Plaintiffs-in-error further respectfully submit that this Court misapplied the decisions which it recites in support of its holding that the individual defendants and the Savannah Branch, NAACP, were the agents of the corporate-defendant. Submitting that the cases cited properly recite the law, it is contended that use of such cases must be supported by the evidence.

The facts show that the corporate-defendant was not even aware of the Savannah Branch's meeting or the picketing by anyone. Nor were they aware of the disorders which allegedly took place in the area around the premises. Law, in his uncontraverted testimony testified that the corporate-defendant only became aware of the situation when the court order temporarily restraining the picketing was served on it, a month after the Savannah Branch meeting had been held (R. 182-183). He further testified that the only time in which the corporate-defendant would otherwise have been advised of the Branch activities would have been in the Branch's annual report (R. 182). It suffices to say that under the evidence there are no 'orders' given by the corporate-defendant to the Savannah Branch as stated in the opinion. Nothing in the organizational or legal structure of the corporate-defendant and Savannah Branch justifies an inference of knowledge. Clearly, without knowledge or legal responsibility for knowledge there can be no conspiracy participation. *Monand* v. *Universal Film Exchange*, 72 Fed. Supp. 469, aff'd 172 F. 2d 37, cert. den., 330 U.S. 907; rehearing den., 337 U.S. 934; rehearing den., 337 U.S. 961. Further, since there was no evidence that Law originally acted without authority and assumed to act for the corporate-defendant without au-

[fol. 673] thority, or that the corporate body had at any time given any authority to him or the Savannah Branch to act for them, there could be no requirement of repudiation or ratification by the corporate body as suggested by the opinion and the cases cited therein. Also, by way of anal-

ogy, it has been determined that before a local union can be considered an agent of the national union it must be shown that the national is in a position to control the activities of the local. *DiGiorgie Fruit Corp.* v. *NLRB,* 191 F. 2d 642 (1950), cert. den., 342 U.S. 869. Of course, there is no evidence in this case that the Savannah Branch or Law were under the control of the corporate-defendant.

5.

This Court has permitted the jury award of $50,000 punitive damages as against all but one of the defendants to stand in spite the fact that there was absolutely no evidence introduced to show the existence of malice or bad faith by any of the defendants. When these damages are viewed in light of the admission of prejudicial hearsay testimony concerning unlawful acts by persons unnamed and unidentified other than by race, and in light of the trial judge's ruling and charge which permitted the jury to find against *all* of the defendants without requiring any evidence of agency between the alleged perpetrators and defendants, the conclusion becomes inevitable that this Court, and the court below, has permitted judicial processes to be used in such manner as to effectively limit or to bring an end to NAACP local and national activities in this State. This subverts the judicial processes and clearly constitutes a deprivation of due process under the Fourteenth Amendment, and a denial of First Amendment rights to freedom of association, all under the United States Constitution and Article I, Section 1, paragraphs 3 and 24 of the Georgia Constitution, 1945.

[fol. 674] Wherefore, your petitioners, plaintiffs-in-error, pray that a rehearing be granted in this case and the decision of the Court reversed.

Donald L. Hollowell, 859½ Hunter St., N. W., Atlanta, Georgia 30314.

B. C. Mayfield, E. H. Gadsden, 458½ W. Broad St., Savannah, Georgia.

Robert L. Carter, Maria L. Marcus, Ann C. Feldman,
20 West 40th St., New York, New York 10018.

[fol. 674a] Certificate of Service (omitted in printing).

[fol. 675]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—May 7, 1965

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

National Association for the Advancement of Colored People et al. v. Haldred Overstreet.

Upon consideration of the motion for a rehearing filed in this case it is ordered that it be hereby denied.

[fol. 676] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 677]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1965

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SAVANNAH BRANCH, ET AL., Petitioners,

VS.

HALDRED OVERSTREET

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 30th, 1965.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 30th day of July, 1965.

[fol. 678]

Supreme Court of the United States

No. 505, October Term, 1965

National Association for the Advancement of Colored People, et al., Petitioners,

v.

Haldred Overstreet

Order Allowing Certiorari—December 6, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted limited to Question 2 presented by the petition which reads as follows:

"2. Has petitioner National Association for the Advancement of Colored People, a New York Corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?"

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.